

The Great Books of Islamic Civilization

Ibrāhīm ibn Mūsā Abū Ishāq al-Shāṭibī

THE RECONCILIATION
OF THE FUNDAMENTALS
OF ISLAMIC LAW

VOLUME II



Al-Muwāfaqāt fī Usūl al-Sharīʿa

Translated by Professor Imran Ahsan Khan Nyazee

Reviewed by Professor Raji M. Rammuny

Muḥammad bin Hamad Al-Thani Center for Muslim Contribution to Civilization
in Association with Garnet Publishing

*The Reconciliation of the
Fundamentals of Islamic Law*

Volume II

Muḥammad bin Hamad Al-Thani Center
for Muslim Contribution to Civilization

Faculty of Islamic Studies
Qatar Foundation for Education,
Science and Community Development

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FOREWORD

Praise be to Allah, and blessings be upon our Prophet Muhammad (PBUH) and his progeny and companions.

This second volume of the English translation of *Al-Muwāfaqāt fī Usūl al-Sharīʿa* (*The Reconciliation of the Fundamentals of Islamic Law*) by Ibrāhīm ibn Mūsā Abū Ishāq al-Shāṭibī is the twenty-second in the series of ‘Great Books of Islamic Civilization’ published by the Muḥammad bin Hamad Al-Thani Center for Muslim Contribution to Civilization.

This series, one of the Center’s key projects, serves its main goal: to disseminate knowledge among Muslims and non-Muslims alike about the contributions of Islam to world civilization, through the translation of works of Islamic heritage into international languages, and through academic research and seminars.

Al-Muwāfaqāt’s book represents an aspect of authentic Islamic philosophy that can enable religious thought to deal with cultural developments across society. As religion is a crucial motivating social force, *al-Muwāfaqāt*’s book can be considered one of the most valuable works of Islamic intellectual heritage in terms of tackling issues in Islamic hermeneutics and the dialectic between text and reality.

Imam al-Shāṭibī was not the first scholar to address these two critical issues. He was preceded by Abu Ishaq al-Juwayni, Imam of the Two Holy Mosques, and his student *hijuta-ul-islam* Imam Ghazali and other scholars. Yet al-Shāṭibī was the first to single out these issues – particularly with regard to the purposes of *sharīʿa* that represent the core of the dialectic between text and reality – by authoring an independent work and expanding the discussion in various dimensions.

The Center received praise and welcome comments and reviews from scientific, academic and intellectual institutions following the publication of the first volume of *Reconciliation of the Fundamentals of Islamic Law* in English translation. We hope the second volume of this impressive book will bridge gaps in the field, and meet the expectations of those awaiting its publication. It will, no doubt, contribute to the current debates in non-Arab communities on hermeneutics and the dialectic between religious texts and reality, thus streamlining contemporary jurisprudence.

In the name of the Center, I would like to extend warm thanks to those who contributed to this important work – especially the translator, Imran Ahsan Khan Nyazee. The book’s style and terminology were not easy to translate, but Professor Nyazee, with his experience and grasp of the issues discussed in the

text, was able to provide a model translation as acknowledged by scholars in the field.

May Allah reward the translator and help the Center continue in its efforts to produce authentic academic translations of our cultural heritage, in order to serve humanity.

Professor Aisha Yousef Al-Mannai
*Director, Muḥammad bin Hamad Al-Thani Center
for Muslim Contribution to Civilization*
Doha, 2013

ABOUT THIS SERIES

THIS series of Arabic works, made available in English translation, represents an outstanding selection of important Islamic studies in a variety of fields of knowledge. The works selected for inclusion in this series meet specific criteria. They are recognized by Muslim scholars as being early and important in their fields as works whose importance is broadly recognized by international scholars, and as having had a genuinely significant impact on the development of human culture.

Readers will therefore see that this series includes a variety of works in the purely Islamic sciences, such as Qurʾān, *ḥadīth*, theology, prophetic traditions (*sunna*), and jurisprudence (*fiqh*). Also represented will be books by Muslim scientists on medicine, astronomy, geography, physics, chemistry, horticulture and other fields.

The work of translating these texts has been entrusted to a group of professors in the Islamic and Western worlds who are recognized authorities in their fields. It has been deemed appropriate, in order to ensure accuracy and fluency, that two persons, one with Arabic as their mother tongue and another with English as their mother tongue, should participate together in the translation and revision of each text.

This series is distinguished from other similar intercultural projects by its distinctive objectives and methodology. These works will fill a genuine gap in the library of human thought. They will prove extremely useful to all those with an interest in Islamic culture, its interaction with Western thought, and its impact on culture throughout the world. They will, it is hoped, fulfil an important role in enhancing world understanding at a time when there is such evident and urgent need for the development of peaceful coexistence.

This series is published by Muḥammad bin Hamad Al-Thani Center for Muslim Contribution to Civilization (MBHACMCC), now a member of the Faculty of Islamic Studies of Qatar Foundation, Doha, Qatar. The Center was established in 1983 under the patronage of H.E. Sheikh Muḥammad bin Hamad al-Thani, the former Minister of Education of Qatar, who also chaired the Board of Trustees. The Board comprised a group of prominent scholars. These included His Eminence Sheikh al-Azhar, Arab Republic of Egypt, and Professor Yousef al-Qaradawi, Chairman, International Union of Muslim Scholars. At its inception the Center was directed by the late Dr Muhammad Ibrahim Kazim, former Rector of Qatar University, who established its initial objectives.

Until 1997, the Center was directed by the late Dr Kamal Naji, the Foreign Cultural Relations Advisor of the Ministry of Education of Qatar. He was assisted by a Board comprising a number of academicians of Qatar University,

in addition to a consultative committee chaired by the late Dr Ezzeddin Ibrahim, former Rector of the University of the United Arab Emirates. A further committee acting on behalf of the Center comprises prominent university professors who act under the chairmanship of Dr Raji Rammuny, Professor of Arabic at the University of Michigan. This committee is charged with making known, in Europe, in America, in Asia and elsewhere the books selected for translation, and in selecting and enlisting properly qualified university professors, orientalist and students of Islamic studies to undertake the work of translation and revision, as well as overseeing the publication process. In 1997, the late Professor Osman Sid Ahmad Isma'il al-Bili took over as General Supervisor of the Centre. In January 2009, the CMCC joined the Qatar Foundation for Education, Science and Community Development as part of the Faculty of Islamic Studies. In May 2010 Her Highness Sheikha Moza bint Naser, the Chairperson of the Qatar Foundation, named the Center as Muḥammad bin Hamad Al-Thani Center for Muslim Contribution to Civilization. Late Professor Osman remained the Director of the Center until his death in March, 2011.

It would be a shortfall on our part if we did not record our gratitude to Professor Hatem El-Karanshawy, Dean of the Faculty of Islamic Studies, and our indebtedness for his unswerving support and patronage since the affiliation of the Center to the QFIS.

THE BOOK OF *MAQAṢID*
(PURPOSES OF THE *SHARĪʿA*)



INTRODUCTION

The *maqāṣid* (purposes) that are the subject of examination are of two types: the first pertain to the intention of the Lawgiver; and the second pertain to the intention of the subject (*mukallaf*).

The first type is considered: (1) from the perspective of the primary intention of the Lawgiver in laying down the *sharīʿa* (law); (2) from the perspective of His intention in laying it down for comprehension (by the subject); (3) from the perspective of His intention in laying it down for the obligation of meeting its requirements; and (4) from the perspective of His intention to make the subject submit to the *ḥukm* (dictates) of the *sharīʿa*. These are four types.

Prior to the commencement of our main purpose, we shall present a generally accepted introductory discourse on this topic, which is that the formulation of the laws is for securing the interests of the servants (human beings) in both the here and the Hereafter.¹ This is a claim that must be supported by proof with respect to its validity and invalidity. This is not the occasion for providing such a (detailed) proof; however, there has been a disagreement about it in *ʿIlm al-Kalām*.² Fakhr al-Islām al-Rāzī thought that the *aḥkām* (laws) of Allāh are decidedly not based upon underlying causes, just like His acts are not.³ The Muʿtazila agreed that the *aḥkām* of the Exalted are based upon underlying causes that seek to secure the interests of the servants. This is also the view adopted by most of the later jurists.⁴ When a compulsion arose in the discipline of *uṣūl al-fiqh* (Islamic jurisprudence) for establishing the underlying causes of the *aḥkām* of the *sharīʿa*, it was established that the underlying causes are to be taken in the meaning of signs that identify the *aḥkām* specifically.⁵ There is no need to verify the matter for this issue.⁶

What is to be relied upon is what we concluded through induction that the *sharīʿa* has been formulated for the interests of the servants, and this induction is one that is not disputed by al-Rāzī or by others.⁷ Allāh, the Exalted, says about the sending of the Prophets, which is the basis, that they are: “Messengers who gave good news as well as warning, that mankind, after (the coming) of the Messengers, should have no plea against Allāh. For Allāh is Exalted in Power, Wise”,⁸ and “We sent thee not, but as a Mercy for all creatures.”⁹ For the basis of creation, He said: “He it is Who created the heavens and the earth in six Days – and His Throne was over the Waters – that He might try you, which of you is best in conduct”,¹⁰ “I have only created Jinns and men, that they may serve Me”,¹¹ and “He Who created

Death and Life, that He may try which of you is best in deed: and He is the Exalted in Might, Oft-Forgiving.”¹²

As for the underlying causes (wisdom) for the detailed *aḥkām* mentioned in the Book and the *Sunna*, these are more than can be counted. It is like His words after the verse of ablution, “Allāh doth not wish to place you in a difficulty, but to make you clean, and to complete His favour to you, that ye may be grateful.”¹³ In the case of fasting He said: “Fasting is prescribed to you as it was prescribed to those before you, that ye may (learn) self-restraint.”¹⁴ For prayer He said: “Prayer restrains from shameful and evil deeds; and remembrance of Allāh is the greatest (thing in life) without doubt.”¹⁵ He said about the *qibla*, “And wheresoever ye are, turn your face thither: that there be no ground of dispute against you among the people.”¹⁶ In the case of *jihād*, He said: “Permission is given (to fight), because they are wronged.”¹⁷ For *qiṣās* (law of the *talion* or *lex talionis*), He said: “In the law of equality there is (saving of) life for you, O ye men of understanding.”¹⁸ In confirmation of the unity of God, He said: “‘Am I not your Lord (Who cherishes and sustains you)?’ They said: ‘Yea! We do testify!’ (This), lest ye should say on the Day of Judgement: ‘Of this we were never mindful.’”¹⁹ Here the purpose is to warn.

When induction indicates this, and a proposition conveys certain knowledge, we are convinced that the matter persists in all the details of the *sharīʿa*. It is through such propositions that *qiṣās* and *ijtihād* were established. We, therefore, follow the requirements of such induction. The discussion that remains is whether it is obligatory or not obligatory on the basis of the knowledge conveyed. We, therefore, say: “It is from Allāh that help is sought.”

NOTES

- 1 The following text from our book, *Theories of Islamic Law*, may be helpful: “Has the Lawgiver laid down laws in the interest (*maṣlaḥah*) of man? If this is true, can the interest of man be an independent source of laws? Is man free to determine his own interest, or is it predetermined by the Lawgiver? These questions have always been at the forefront of Islamic legal theory. The answers form the basis of the principle of *istiṣlāḥ* that seeks to secure the interests (*maṣāliḥ*) preserved and protected by the Islamic legal system. The majority of the Muslim jurists agreed that the Lawgiver lays down laws in the interest of man. There have been some voices against it too, notable among them being the objections of the illustrious Imām al-Rāzī (d. 606). He gave extremely powerful arguments against this idea. His arguments are too complex and difficult to be related in a rudimentary discussion. Al-Rāzī did concede though that whenever we consider the laws and the interests of man, we find them lying side by side, or existing together, yet we cannot establish a causal relationship between them – that is, the laws are laid down because they serve the interest of man. Let us attempt to explain the problem in a simple way.” Imran Ahsan Khan Nyazee, *Theories of Islamic Law* (Islamabad: Federal Law House, 2007), 56.
- 2 For a detailed discussion of this issue and for the proof see Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl min ‘Ilm al-Uṣūl*, Ed. Ṭāha Jābir al-‘Alwānī, vol. 5 (Beirut: Mu’assasat Al-Risalah, 1992), 157–98.
- 3 This has led some commentators to express amazement as to why he mentions al-Rāzī alone when there are jurists like the Zāhirīs as well as others who deny the existence of underlying causes. Our response to this observation is that here al-Shāṭibī is using the term *‘illa* in its broad meaning and not its narrow meaning as the basis of *qiyās*. He means thereby the *ḥikma* (wisdom) underlying the *aḥkām*. The *ḥikma* indicates a purpose and this general purpose is the interest or the welfare of human beings. This is a much wider concept. In short, the issue is whether the Lawgiver has laid down the *aḥkām* for the welfare of human beings. This is the issue discussed by al-Rāzī. For further details see note above.
- 4 That is, jurists coming after al-Rāzī.
- 5 This is the technical and narrow meaning of the *‘illa*.
- 6 Thus, ignoring the discussion about the *‘illa*, he turns to the *ḥikma* that pertains to the welfare of human beings.
- 7 Imām al-Rāzī acknowledges that the interest of man is always found to lie side by side with the *aḥkām*, yet there is no causal relationship between the two.
- 8 Qur’ān 4:165.
- 9 Qur’ān 21:107.
- 10 Qur’ān 11:7.
- 11 Qur’ān 51:56.
- 12 Qur’ān 67:2.
- 13 Qur’ān 5:6. It is to be noted that difficulty (*ḥaraj*) is the *ḥikma* and not the *‘illa*, however, al-Shāṭibī uses the terms *ḥikma* and *‘illa* in the same meaning, as noted above and in the previous volume.
- 14 Qur’ān 2:183. Self-restraint may be the *ḥikma* for fasting, but is not the *‘illa*.
- 15 Qur’ān 29:45.
- 16 Qur’ān 2:150.
- 17 Qur’ān 22:39. This shows that *jihād* is permitted only when the Muslims have been wronged. Consequently, violence is not advocated by the Qur’ān.
- 18 Qur’ān 2:179.
- 19 Qur’ān 7:172.

PART I
THE PURPOSES OF THE LAWGIVER



THE FIRST CATEGORY: THE INTENTION OF THE LAWGIVER IN LAYING DOWN THE *SHARĪʿA*

The First Issue: Legal Obligations and Their Underlying Purposes

The obligations of the *sharīʿa* refer to the preservation of its purposes in relation to creation. These purposes do not go beyond three types, requiring that:

- first: the purposes be necessary (*ḍarūriyya*)
- second: the purposes pertain to needs (*ḥājjiyya*)
- third: the purposes pertain to complementary norms (*taḥsīniyya*).

As for the necessary purposes, the meaning is that they must seek to establish interests of the *dīn* (hereafter) and the *dunya* (this world) so that if they are missing the interests of this world lose their harmony. In fact, their absence leads to corruption and trials as well as to the loss of life. In the Hereafter, it leads to the loss of success and blessings and reversion to manifest loss.

Their preservation takes place in two ways:¹

First: by establishing their pillars and strengthening their foundations; this is an expression for their preservation from the positive aspect (establishing existence).

Second: by ensuring the removal of disharmony that affects them or is likely to affect them; this is an expression for their protection from the defensive aspect (defending against negation).

Thus, the fundamentals of worship relate to the preservation of *dīn* from the aspect of existence, like faith, bearing testimony twice (about faith), prayer, *zakāt* (poor-due), fasting, *ḥajj* (pilgrimage) and other similar matters.

Human practices (*ʿādāt*) relate to the preservation of life and intellect from the positive aspect as well, like the utilization of eatables, beverages, clothing, residence and the like.

Human transactions (*muʿāmalāt*) relate to the preservation of progeny and wealth from the positive aspect. They also relate to the preservation of life and intellect, but by means of practices.

Offences (*jināyāt*) – which are gathered together in commanding the good and forbidding evil – relate to the preservation of all the purposes, but from the defensive aspect.

Acts of worship and practices have been illustrated. Human transactions (*muʿāmalāt*), on the other hand, are those that pertain to the interest of one human in relation to others. These are like the transfer of property with or

without a counter-value, as in contracts about slaves, things yielding benefits and marriage. Offences (*jināyāt*) are those that pertain to what has preceded by way of annulment. Thus, such legal provisions have been laid down that do away with this annulment and restore the interests. The legal provisions are like: *qiṣāṣ* (law of the talion) and *diyāt* (blood-money) for life; *ḥadd* for preserving the intellect; compensation and valuation of wealth for progeny; amputation of the hand and compensation for wealth; and whatever is similar.

The necessities as a whole are five. These are: the preservation of the *Dīn*, Life, Progeny, Wealth and Intellect. The jurists said that these are interests preserved and protected by each nation.²

As for the essential needs (*ḥājjiyyāt*), the meaning underlying them is that they are required so as to attain facility and removal of constraints that usually lead to difficulty and hardship and are accompanied by the loss of the desired object. When these needs are not preserved, the subjects, as a whole, are affected by difficulty and hardship. Nevertheless, such hardship does not reach the level of normal destruction expected in the case of the (five) general interests.

The needs prevail in worship, practices, transactions and offences. In acts of worship these are like light exemptions with respect to the hardship accompanying illness and journey. In practices it is like the permissibility of hunting and enjoyment of the good things that are lawful, whether these pertain to beverages, clothing, residence, riding animals or other such things. In the *muʿāmalāt* these are like *qirāḍ* (profit-sharing), *musāqāt* (irrigation), *salam* (advance payment) and the exclusion of auxiliary things within a contract, like the fruit of a tree and the wealth of a slave. In the case of *jināyāt* (offences), it is like conviction on suspicion, assigning responsibility for bloodshed, collective oath, the imposition of blood-money on the *ʿāqila* (group support), assigning liability to craftsmen and other similar matters.

The *taḥsināt* (complementary norms) mean the acquisition of the good things from among the practices and avoiding deceptive things that are found obnoxious by reasonable temperaments. This category covers the ethical norms. These are operative in things in which the first two categories operate. Thus, in *ʿibādāt* they pertain to the removal of impurities – in fact covering all forms of purification – the covering of the private parts, the seeking of adornment, seeking nearness through alms and charity and other forms of seeking nearness to Allāh, as well as other similar matters. In practices they pertain to the etiquette of eating and drinking, the avoidance of filthy eatables and injurious beverages, as well as extravagance and meanness in consumption. In *muʿāmalāt* they are like the prevention of the sale of impure things, the sale of freely available water and vegetation, the usurpation by a slave of the duty of testimony and *imāma*, the usurpation of the office of *imāma* by a woman,³ the contracting of her own marriage, the seeking of emancipation and its auxiliary matters through the contract of *kitāba* and *tadbīr*, as well as

matters similar to these. In *jināyāt* it is like the prevention of the execution of a freeman in return for a slave, or the killing of women, children and monks during *jihād*. These few examples point to other things that are within the same meaning. All these matters refer to the additional merits over and above the interests pertaining to necessities and needs. The reason is that their loss does not disturb either the necessary interest or the one pertaining to need; they apply to ethical norms and adornment.

The Second Issue: Matters Supplementing the Three Higher Categories

Each one of these categories is supported by acts that are supplementary and complementary to them, so that if we assume their loss it will not disturb the original purposes.⁴

As for the first, it is like equivalence in *qiṣāṣ* (retaliation). The reason is that it does not invoke necessity nor does it give rise to a dire need; rather, it is supplementary. Likewise, reasonable maintenance, reasonable wages, reasonable *qirāḍ*, prevention of looking at a strange woman, drinking a very small quantity of an intoxicant, the prohibition of *ribā*,⁵ piety associated with the *mutashābihāt*, and giving expression to the symbols of *dīn*: like congregational prayer in the case of definitive obligations and *ṣunan*, the Friday congregational prayer, the taking of pledge and surety, as well as witnesses in sale – we say that all these belong to the category of necessity.

In the second category are things like the acknowledgement of equal status and reasonable dower for a minor girl. Such things do not invoke essential needs like the need of marriage in the case of a young girl. If we say that sale belongs to the category of needs, then taking witnesses, pledge and surety belong to the category of supplementary rules. Among these also is the combining of two prayers during a journey that leads to the curtailment of prayer as well as combining by a person who is ill and fears that his illness will affect his mind. These, and things similar, lend completion to this category, for if they were not legislated the original facility and ease would not be disturbed.

As for the third, the rules are like those for the etiquette of cleanliness, recommendations with respect to purity, giving up the nullification of acts already commenced even though these are not obligatory, spending from the lawfully earned things, exercising a choice in the case of sacrifice, *ṣaqīqa* (sacrifice on account of the new-born) and emancipation, as well as acts resembling these.

Among the examples of this issue is that the essential needs are supplementary to the necessities. Likewise, the complementary norms lend completion to the essential needs. The necessities are the fundamental interests, in conformity with the details that will be coming up after this, Allāh, the Exalted, willing.

The Third Issue: The Completion and the Original Principle

Each supplementary norm, in so far as it is supplementary, has a condition. The condition is that its consideration should not attempt to annul the primary norm. Thus, each supplementary norm whose consideration leads to the rejection of the primary norm is not to be treated as a supplementary norm. This has two aspects:

First: in the nullification of the primary norm is the nullification of the supplementary norm. The reason is that the supplementary norm in relation to what it completes is like an attribute of the thing described. If the consideration of the attribute leads to the removal of the thing described, it becomes necessary that the attribute be removed as well. The consideration of this supplementary norm in this manner leads to the negation of its consideration; this is impossible and cannot be conceived. If it cannot be conceived, it cannot be considered a supplementary norm. The primary rule will, therefore, be considered without any addition.

Second: if we were to assume by way of supposition that the supplementary interest can be attained despite the loss of the primary interest, then the attainment of the primary interest will have a higher priority in so far as there is discord between them.

The elaboration of this is that the preservation of life is universally important and the preservation of manly virtues is essential; therefore, impure substances are prohibited for the preservation of such virtues and to keep those who possess these virtues within the confines of acceptable practices. If necessity requires the revival of life by the consumption of an impure substance, such consumption has a higher priority.

Likewise the primary interest of sale is necessary, while the prevention of hazard and uncertainty are supplementary. If the negation of hazard is stipulated in its totality the door of sale will be closed. In the same way the contract of hire is necessary or a matter of need, while the stipulation of both counter-values being present at the time of commutative contracts is supplementary. As the presence of the counter-values is possible in the sale of goods without difficulty, the sale of an absent commodity was prohibited, except in the case of *salam* (advance payment). This is not possible in the case of hire. The stipulation of the existence of benefits and presence (at the time of contract) will close the door on this transaction, as hire is in need of such benefits. Thus, hire is permitted even though the counter-value is not present nor does not exist. The same applies to glancing at private parts during physical contact and medical treatment and so on.

The same is true of undertaking *jihād* alongside a ruler who lacks moral probity (*jamr*, *ʿadālah*). The scholars have upheld its validity. Mālik said that if it is given up (for this reason), it will result in an injury to the Muslims. *Jihād* is one of the necessities; so is the existence of a ruler. But the existence of moral probity (*ʿadālah*) is a complementary condition for the necessity.

If a complementary norm impacts its basis so as to nullify it, it is not to be taken into account. It is for this reason that the command is laid down by the Prophet (pbuh) for undertaking *jihād* alongside a ruler lacking moral probity.⁶

The command about praying behind an unjust ruler also falls into the same category. Giving up such a prayer leads to the neglect of the *sunna* of the congregation. The congregation is one of the symbols of religion that needs to be established. Moral probity is a complementary condition for this requirement. The primary basis is not to be annulled through a complementary norm.

Also among such rules is the completion of the essential elements of prayer as complementary for the necessity. If the requirement leads to the situation where prayer is not offered – such as a person who is ill and unable to do so – the complementary *rukn* (essential element) will be dropped. When there is hardship in bringing about such completion, the hardship is removed with respect to what is not completed. The worshipper is to pray according to the facility offered by the exemption (*rukḥṣa*). Covering the private parts is one of the complementary norms for prayer, but if it is required in absolute terms it will become difficult to perform by one who cannot find a covering. Things of this nature are found in the *sharīʿa* beyond reckoning. All of these are to be understood according to this reasoning.

Examine what al-Ghazālī has said in his book *al-Mustaḥḥarī* about the *imām* (ruler) who does not have all the qualifications for the *imāma*, and then apply that to similar cases.

The Fourth Issue: The Necessary Purposes and Their Disturbance

The *ḍarūrī* (necessary) purposes in the *sharīʿa* are the basis for those pertaining to the *ḥājī* (needs) and *taḥsīnī* (complementary) purposes.

If the suspension of the *ḍarūrī* in absolute terms is assumed, the other two will stand suspended in absolute terms. From the suspension of the lower two (or one of them), the suspension in absolute terms of the *ḍarūrī* does not necessarily follow. Yes, the suspension of the *taḥsīnī* in absolute terms will necessarily lead to the suspension of the *ḥājī* in some respects. Likewise, the absolute suspension of the *ḥājī* will lead to the suspension of the *ḍarūrī* in some respects. Consequently, when the *ḍarūrī* is preserved, it is essential to preserve the *ḥājī* as well, and when the *ḥājī* is preserved, it is essential to preserve the *taḥsīnī*. When it stands established that the *taḥsīnī* serves the *ḥājī* and the *ḥājī* serves the *ḍarūrī*, it is the *ḍarūrī* that is desired primarily.

This yields five points that must be elaborated:

First: that the *ḍarūrī* is the basis for what accompanies it among the *ḥājī* and the *taḥsīnī*.

Second: that the suspension of the *ḍarūrī* necessarily leads to the suspension of the rest in absolute terms.

Third: that the absolute suspension of what remains does not necessarily lead to the suspension of the *ḍarūri* in absolute terms.

Fourth: that the suspension of the *taḥsīnī* in absolute terms, or the *ḥājī* in absolute terms, does lead to the suspension of the *ḍarūri* in some respects.

Fifth: that it is essential to preserve the *ḥājī* and the *taḥsīnī* in order to preserve the *ḍarūri*.

Elaboration of the First Point

The elaboration of the first point is that the interests of religion are based on the preservation of five norms that were mentioned in what has been said earlier. Consequently, the existence of this temporal world is considered to be based upon this, so much so that if they are disturbed the temporal world will cease to exist – I mean what is specific to the subjects and their obligations. Likewise, the affairs of the next world cannot survive except by such preservation.

Thus, if *dīn* is missing, the consequent expected reward will be missing. If the subject is missing, the worshipper who has to follow the *dīn* will become non-existent. If reason is missing, religious belief will become non-existent. If reproduction is missing, survival will become non-existent in practice. If wealth (*māl*) is missing, life cannot be maintained. By *māl*, I mean what is the subject matter of ownership and is enjoyed by the owner alone to the exclusion of others when he has acquired it lawfully. In this, food, drink and clothing are all the same despite their various differences. It includes all things of value that lead to the meaning that, if they were eliminated, survival would become difficult. All this is known and is not doubted by one who is aware of the order of things in this world and knows them to be the provision for the Hereafter.

If this is established, then the matters pertaining to essential needs revolve (for protection) around this pastureland (of necessities), because they relate to the necessities in order to complete them in so far as they remove the occurrence and acquisition of hardship, and direct them towards the maintenance of balance and justice in affairs, so that there is no inclination towards excesses and waste. This is illustrated by what was said earlier about the stipulation of the absence of hazard and uncertainty in sales. It is also similar to our insistence about the removal of difficulty for the subject as a result of illness so that he is permitted to pray in the standing posture or reclining on one side. It is also permitted to him to give up fasting until the time of his recovery. Likewise, it is also permitted to the traveller to relinquish his fast and a segment of his prayer. The same applies to all the remaining examples that have preceded. If this is understood, a reasonable person will not doubt that these affairs of essential needs are sub-issues that include the affairs that amount to necessities. The same rule is assigned to the complementary values, because they complete what amounts to an essential need or a necessity. When a necessity is completed it becomes apparent, and when an essential need is

completed, then the essential need is complementary for the necessity. A thing that is complementary for the complementary is complementary for the first. Consequently, the *taḥṣīnī* is like a sub-issue of the necessary principle and is based on it.

Elaboration of the Second Point

The elaboration of the second point is obvious from what has preceded. The reason is that if it is established that the necessity is the desired principle and that what accompanies it is based on it as an attribute or as a sub-issue, the disturbance of this principle necessarily leads to disturbance in the rest. This is so as the overturning of the principle naturally leads to the overturning of the sub-issue.

If we assume that the principle of sale is removed from the *shariʿa*, the consideration of uncertainty and hazard will not be relevant. Likewise, if the principle of *qiṣāṣ* is removed, the question of equality will not be relevant, for it is an attribute of *qiṣāṣ*. It is not possible that an attribute be established in the absence of its object. It is also seen that if the principle of prayer is waived in the case of a person who has fainted or in the case of a menstruating woman, it is not possible that the rules for recitation, *takbīr*, congregation, purification, legal or actual, remain for them and be applied. Again, if it is assumed that there is a rule that is established for a certain matter and thereafter that matter is removed, but the rule remains applicable, then this is not possible. It is from this that it is understood, for example, that if prayer is removed all that is subsidiary and complementary to it is also removed, like recitation, *takbīr*, supplication and so on. The reason is that these are the attributes of prayer by necessity; therefore, it is not proper to state that the principle of prayer is removed but the attributes are not.

We say the same if the principle of prayer is prohibited intentionally, or fasting for that matter, like prayer at the two ends of the day or the prohibition of fasting on *ʿīd* day. Whatever is its characteristic and adds to its completion is included within the ambit of the prohibition in so far as it is a prohibition about prayer that has a comprehensive form in fact, because the prohibition must be for a specific act of worship that has this form. It cannot be prohibited except with all its acts and recitations. The acts completing the prayer are, therefore, classified under the prohibition by classifying the whole.

It is not to be said that these things have a reality of their own, and they cannot be prohibited because of this; therefore, it is not essential that they be prohibited in the absolute sense. If they are not prohibited in the absolute sense, their removal does not follow from the removal of what they are subsidiary to. Accordingly, the overturning of a principle does not follow necessarily from the overturning of its individual constituents, as was laid down earlier. In addition to this, the means have this relationship with the

objectives, like purification with respect to prayer. The means, however, have been established even in the absence of the objectives, like the passing of the razor, during *hajj*, over the bald man's head. Thus, things that have a reality of their own cannot be removed even though they have been determined to be complementary for other things, by the removal of the things they complete.

The reason is that we will say: Recitation and *takbīr*, as well as other things, have two forms: (1) a form in so far as they are constituent parts of prayer; and (2) a form of their own. As for the form from the second perspective, the discussion does not pertain to it; the discussion is from the perspective of their being constituent parts of prayer. In this meaning, by virtue of its form, the constituent part becomes a property of the thing described, and it is not possible that the property remains after the elimination of the thing described, because the property is a meaning that does not survive on its own. Likewise the thing that has a similar form; if this is the case, it is not proper to say that the complementary survives in the absence of the thing completed. This is the desired meaning. The same is to be said about fasting and matters similar to it.

As for the issue of the means, it is a different matter. If, however, we assume that the means is like a property of the thing described, because it has been formulated for it, then it cannot survive. Nevertheless, the situation is that the means survives even in the absence of the objective. The evidence may indicate its survival in the *ḥukm*, in which case it is desired for itself, and it shifts to become a means for another objective. There is no obstacle in this. It is in this meaning that the passing of the razor over the head of a bald person is understood.⁷ It is on the basis of the same rule that the view is sound that the razor be passed over a child who is born circumcised. The basis is that the evidence indicates the passing of the razor as being something desired in itself, otherwise the opinion would not be valid. The rule is sound, and the objection raised against it does not diminish it in any way. Allāh knows best.

Elaboration of the Third Point

The necessary in relation to others is like the thing described along with its properties. It is known that the thing described is not removed with the removal of some of its properties. Likewise in our issue, because it is similar to it. The illustration is prayer in which *dhikr*, recitation and *takbīr*, which are considered attributes, have become void due to some reason, yet the basis of prayer is not invalidated. Likewise, when the consideration of uncertainty and hazard is removed, the essential element of sale is not invalidated, as in the sale of wood, a padded dress, walnuts, chestnuts, roots embedded in soil such as carrots, turnips, foundations of walls and what resembles these.

The same applies if the requirement of equality is removed from retaliation (*qiṣāṣ*). It does not annul the basis of retaliation. The closest it comes to in reality is of being an attribute of the thing described. The annulment of the

attribute does not annul the thing described, something with which we are occupied here, unless the attribute becomes an essential property so that it is a part of the essence of the thing described. In such a case, it is an essential element (*rukn*) of its essence, and a foundation of its basis. The basis is removed with the removal of the foundation, resembling what we say about bowing and prostrating in the case of prayer. Prayer is rendered invalid in its essence by the invalidation of any of these with respect to the person who is able to perform them. There is no disagreement about this. An attribute that is of this nature does not belong to the supplementary values nor to the category of needs; rather, it belongs to the category of the necessities.

It is not to be said: Among the complementary attributes of prayer is that it should not be performed in a usurped land. Likewise, slaughtering of an animal should not be undertaken with a misappropriated knife and so on. Nevertheless, a group of jurists upheld the nullity of the basis of prayer and the basis of slaughter. They related the nullity of the attribute with the nullity of the thing described. We will respond by saying: Those who upheld the validity of prayer and slaughter based their reasoning on this established rule, while those who upheld the nullity of prayer based it upon the attribute that is within its essence, as if prayer itself was prohibited in so far as all its elements, being essential properties, were misappropriated. The reason is that these were properties acquired in a usurped land, and the prohibition of usurpation leads to the prohibition of the properties; therefore, prayer itself becomes prohibited, like prayer at the two ends of the day and fasting on *ʿid* day. The same applies to slaughter when the knife becomes prohibited with respect to its use, because its operation is misappropriated. This determined operation was slaughter that was prohibited; therefore, the essence of slaughter became prohibited on account of it. The nullity of the intrinsic attribute therefore reverts to the nullity of the basis due to this consideration.

It is possible to investigate discussions that are the basis of the disagreement in the issue of prayer in usurped land, but it does not affect our principle that has been mentioned. Disagreement is not visualized in it, as it has a rational basis; the disagreement is about linking, or not linking, cases to it.

Elaboration of the Fourth Point

The elaboration of the fourth point is from different perspectives:

First: in so far as all of these categories are different with respect to the consideration of emphasis, then the necessities have the greater weight, followed by the needs and the complementary values. They are connected, one to the other, so that nullifying the lighter gives courage to nullify the one heavier than it, and provides an opening to cause disharmony in it. The lighter category then becomes like a fence around the heavier category, and the one that moves around the fence is likely to cross over into it. Thus, a disharmony

in the complementary category is like a disharmony in the one that is being complemented.

An illustration of this is prayer. It has acts that complement it, and these are other than the essential elements and obligations. It is known that one who disturbs them goes on to cause disharmony in the obligations and elements, because the lighter is like a gateway to the heavier. What indicates this is laid down in a tradition from the Prophet (pbuh): “It is like one grazing around the fence (of the pastureland); very likely to fall into it.”⁸ A tradition says: “The curse of Allāh is on the thief; he steals an egg and his hand is amputated, and he steals a rope and his hand is amputated.”⁹ There is also what someone said: “I place between myself and *ḥarām* a veil of the lawful and do not tear it up.”¹⁰

This is a principle that is definitive and agreed upon. The location of its discussion is in Part II of this book.

Accordingly, the person who develops the courage to cause disharmony in the lighter category is poised for aggression against the rest too. Likewise the one who trespasses against these develops the courage to work against the necessities as well. Consequently, the nullifying of the complementary values in the absolute sense leads to the nullification of the necessities to some extent.

This means that the person who relinquishes the complementary acts and causes disharmony in them in the absolute sense, by not performing any of them, or even when he performs them he confines himself to the minimum, or he performs them completely when these are very few, has actually relinquished them and has negated them. It is for this reason that if the worshipper confines himself to what is obligatory, there is nothing in his prayer that is complementary, and it is closer to some kind of sport. It is due to this reason that the nullification of such acts is upheld by those who maintain such a view. We say the same for sale: If the elements that are complementary in it are lost, like uncertainty and hazard, it is likely that the objective of the contract will not be available to either party. The conclusion of the contract will be like its absence. In fact, its absence will be better than its existence. The same is said of other parallel cases.

Second: each level in relation to a level that has a higher priority than it is like the supererogatory worship with respect to what is obligatory. Thus, covering of the private parts and turning towards the *qibla* in relation to the main prayer are like recommendations for it; likewise the recitation of a *sūra*, *takbīr* and *tasbīḥ* with respect to the essence of prayer. The same applies to edible things and beverages that are not ritually impure, nor are owned by someone else or on which *zakāt* has not been paid, in relation to the principle of maintaining the body. The maintenance of life is a supererogatory act and so also is the commodity sold being known and lawfully beneficial, along with other characteristics that are like supererogatory attributes with respect to the main sale contract.

It was established in the *Book of Ahkām* that the recommended category (*mandūb*) viewed as a particular is converted and becomes obligatory in relation to the universal. Thus, violating the recommended absolutely amounts to the violation of one of the essential elements. The reason is that this recommended category has, on the whole, become an obligation within this obligation. If a person violates one of the essential elements of an obligatory act, without any excuse, the obligation itself stands annulled. Likewise, if he violates something that is at the same level or resembles it. From this perspective it is also valid to say that the complete nullification of the complementary acts nullifies the necessity in certain cases.

Third: the *hājīyāt* and *taḥsināt* taken collectively are coveted and each one of them becomes a particular case of the *ḍarūriyāt* (necessities). The reason is that the completion of the necessities in so far as they are necessities is compatible with their operation in as much as such completion creates facility and ease for the subject, not cramping and injury. It creates good traits and ethical values in him that fill the gaps and complete the details due to which reasonable persons assign merits to the completion. When such traits are missing, the category of necessities becomes clothed with hardship and constriction, and the state of the worshipper is described as the opposite of what is required by good habits. The performance of the obligatory act will suffer from affectation blurring the clarity with which the *shariʿa* is laid down. This is the opposite of the reason for which it was ordained. A tradition says: “I was sent to perfect the valued ethical traits.”¹¹ It is as if the absence of complementary acts, if assumed, leads to the non-occurrence of the obligatory act in the required form. This creates an obvious disharmony in the obligation. If, however, the violation in the complementary act, which completes the obligation, occurs in part of it or in a minor way so that its preferred form is not lost nor its freshness and the door to facility is not closed, then in such a case the act is not violated. This is obvious.

Fourth: the *hājī* and the *taḥsinī* serve the necessary principle (*ḍarūri*), are compatible with it and enhance its particular form, either prior to its occurrence, simultaneously or as subservient to it. In each situation, they revolve around it to serve it. It is, therefore, suitable that the necessary attain its perfect form through them.

This is illustrated by the case of prayer, for example. When purification precedes it, a feeling is conveyed that some lofty task is to be performed. When the face is turned towards the *qibla*, it creates the feeling of devotion to the One worshipped. When the intention to worship is formed, it generates a state of abundant devotion and peace. Thereafter, following the sequence, a *sūra* is introduced, which serves the duty towards the *umm al-Qurʿān* (*Sūrat al-Fātiḥa*). The reason is that the entire speech of the Lord is meant to lead to Him. Thus, when the worshipper pronounces the *takbīr*, glorifies God, and recites the *tashahhud*, they are all meant to prod the heart and to awaken it

so that it does not forget that it is in contact with God and is standing before Him. This continues until the end of prayer. If the worshipper were to offer supererogatory prayers prior to the obligatory prayer, they act as a stage in which presence is requested. If he offers them after the main prayer, it is to maintain the feeling of presence before God during the obligation.

The fact to be considered in this is that in the constituent parts of prayer remembrance is not separated from its accompanying act, so that the tongue and limbs are in unison for a single purpose, which is presence before God in peace, devotion, reverence and obedience. No part of prayer is devoid of this state so that the door is not opened for forgetfulness or the whispering of the Devil.

You can, therefore, see that these complementary purposes that make a circuit of the pastureland of the necessary are meant to serve it and strengthen its boundaries. If they were to be removed entirely or from a major part, it would create a disturbance in the necessary. It is in this fashion that all the necessities will appear to interact with their complementary purposes, to whomever examines them.

Elaboration of the Fifth Point

This point is obvious because of what has preceded. If the necessary is disturbed due to the disturbance of the complementary value, the preservation of the latter is desired for the sake of the former. Further, as it is an adornment whose beauty does not become apparent with the necessary, it is proper that it should not be devoid of the complementary values.

All this shows that the supreme purpose in the three grades is the preservation of the first, which is division of the necessities (*ḍarūriyāt*). It is for this reason that they are preserved by each nation, in so far as nations do not differ with respect to them even though they differ in the detailed rules. These necessities are the *uṣūl* of *dīn*, the fundamental principles (*qawā'id*) of the *shariʿa*, and the universal principles of the nation.¹²

The Fifth Issue: Worldly Interests and Injuries

The interests (*maṣāliḥ*) that are spread out in this world are examined from two perspectives:

- (1) from the perspective of their coming into existence, and
- (2) from the perspective of their relationship with the legal communication (*khiṭāb*).

The First Examination

The interests of the temporal world, in so far as they exist here, are not pure interests. I mean by *maṣālih* those matters that have a bearing on the existence of human life, its complete maintenance, and what is required by the characteristics of desire and intellect in the absolute sense so that the human can be blessed with them in the absolute sense. This does not occur in the normal way, because these interests are burdened with effort and hardship whether these are less or more, accompany them, precede them or are linked to them. These are like eating, drinking, clothing, residence, riding, marriage and so on. All these things are not attained except by struggle and effort.

In the same way the injuries of the temporal world are not merely injuries in so far as their existence is concerned. The reason is that no injury can be imagined in normal practice that is not accompanied, preceded or followed by ease, enjoyment and the attainment of immense pleasure. This will be indicated to you by the basic rule. The rule is that this world has been created as a blend of two extremes or a mixture of two aspects. A person who seeks one extreme within them will not find it. The proof of this is tested experience in all creation. The basis of this test is linked to the world being created for trial, examination and verification. Allāh, the Exalted, has said: “We test you by evil and by good by way of trial”,¹³ “He Who created death and life, that He may try which of you is best in deed”,¹⁴ as well as other verses conveying the same meaning. A tradition says, “heaven is surrounded by evil things and hell by desires.”¹⁵ Accordingly, in this world there is nothing for anyone that is devoid of this participation of one aspect with the other.

If this is the case, then the interests and injuries pertaining to this world are to be understood in the meaning of what is predominant in them. If the predominant aspect is an interest (*maṣlaḥa*), then it is an interest that is customarily understood to be so. If the other aspect is predominant, then it is an injury (*mafsada*) that is understood to be so in practice. It is for this reason that an act that carries both streams is attributed to what is predominant in it; if the interest is predominant, then it is an act that is desired. It is, therefore, said about it: “This is an interest.” If the harmful aspect is predominant, the act is to be shunned, and it is said about it: “This is an injurious act.” When both elements are equally distributed in it, it is not to be said that it is an interest or an injury, as is the practice about such things. If it is something outside usual practice, then it is to be attributed to something else and is assigned a category other than this.

This is the view about the interests and injuries in this world, in so far as they exist in normal acts.

The Second Examination

As for the second inquiry, from the perspective of the legal relationship with the divine communication, when the interest (*maṣlaḥa*) turns out to be predominant

under normal circumstances if compared to the *mafsada* (injury), then it is desirable in the eyes of the law (*sharʿ*). It is for attaining this interest that a demand has been made from the subjects. In this way its rule can be applied in a proper, well directed, manner so that its attainment conforms closely and completely, and in the preferred way, with the requirements of the practices prevalent in this world. If the interest is followed by some injury, or hardship, then that is not the objective in declaring this act as lawful.

Likewise if the injury turns out to be predominant when the *maṣlahā* is examined under normal circumstances, then its removal is legally the objective. It is for this reason that a prohibition (*nahy*) is proclaimed so that its removal takes place in the most perfect form possible under normal circumstances, something that is acceptable to sound reason. If this injury is accompanied by some interest or pleasure, then this is not the objective of the prohibition with respect to the act; rather, the objective is what was predominant in the subject matter. What is beyond this objective is rejected as a requirement of the prohibition, just like the aspect of injury that was rejected when an (interest bearing) act was demanded.

The conclusion derived from all this is that the interests acknowledged by the *shariʿa*, or the injuries acknowledged by it, are pure without having any strain of injuries, whether less or more. If it is considered that they are mixed up, then it is not so within the legal reality. The reason is that the subjugated interest or the dominated injury means what is present normally during the process of acquisition without an excess that would generally make the Lawgiver turn to it. This is the segment about which it is said that it is not the objective of the Lawgiver in the laying down of the *aḥkām*.

The evidences pointing to this are two:

First: had the dominated aspect been the objective of the Lawgiver, I mean acknowledged by the Lawgiver, the act would not have been commanded at all nor would it have been prohibited at all. It has been commanded in so far as it is a *maṣlahā* or prohibited in so far as it is a *mafsada*, and it is known with a certainty that the issue is not of this nature.

This is reflected in the highest grades of command and prohibition, like the obligation of faith (*īmān*), the prohibition of unbelief (*kufṛ*), the obligation of reviving life and the prohibition of its destruction, and so on. It could be that faith (*īmān*), above which there is no other obligation, was considered prohibited in so far as it demolishes the self, in the absolute sense, severing its connection with the pursuit of desires and placing it under strict authority of obligation in which there is no enjoyment. It could also be that unbelief (*kufṛ*), which requires the release of the self from the constraints of obligation and the satisfaction of desires without fear, was commanded or permitted, because things that please and provide a release from oppressive restrictions are considered a *maṣlahā* as a whole. All this is a pure nullity. In fact, faith is required in the absolute sense and unbelief is prohibited in the absolute sense.

This indicates that the aspect of injury with reference to the demand for faith, and the aspect of interest with reference to the prohibition of unbelief, are not acknowledged by the *shariʿa*, even though their effect is visible in practice and in nature.

Second: had all this been acknowledged by way of objective by the *shariʿa*, all the obligations of the subject would be obligations to perform the impossible, which is null and void according to the *shariʿa*. As for the nullity of the duty to do the impossible in the *shariʿa*, it is elaborated in the discipline of *uṣūl*. As for the interdependence of the two propositions, the reason is that the aspect that stands suppressed, for example, is contrary to the demand for the preferred aspect. The person is commanded to bring about the occurrence of the preferred interest, but in a manner that he is prohibited from bringing about the dominated injury. He is, therefore, required to bring about the act and is prohibited from bringing it about at the same time. The two aspects, however, do not eliminate each other, as has preceded earlier that interests and injuries do not exist in a pure form. It consequently follows that in bringing about an act or omitting it, is the application of the command and prohibition together. Thus, for a single act, it is said to the person, “Do it”, and “Do not do it” – that is, in the same act of bringing it about. This is the essence of the duty to do the impossible.

It is not to be said: That *maṣlaḥa* is not commanded – rather, it is something permissible; therefore, a command and prohibition do not come together and, thus, the prohibition (of doing the impossible) does not necessarily follow.

The reason is that we will respond by saying: This does not apply to all types of interest. *Maṣlaḥa* may be in the permissible category and it may be in the commanded category. If this is conceded, then permissibility is contrary to both command and prohibition. The availability of a choice is the opposite of not having a choice, and both forms are occurring for a single act. The divine communication with respect to both at the same time is a communication to do what the subject cannot bring about – that is, the act in the way it is required. This is what we wished to elaborate. The case is not like offering prayer on usurped land due to the negation of the possibility of offering prayer on other land. The present case is not like this.

Suppose it is said: This determination indicates what the philosophers and those who have followed them have held, to the effect that evil is not the objective of an act. The objective is good. When Allāh created the creation as a mixture of good and evil, it was good for which He created the creation. He did not create it for evil, even though it may occur due to it. For example, a physician, in their view, who administers a bitter, distasteful and repulsive medicine to the patient. He does not administer it for the sake of its bitterness or repulsive properties, but for what it bears in terms of cure and relief. The same is to be said about the opening of veins, cupping and the amputation of

a mangled limb. The purpose of the physician is the acquisition of relief and the repelling of harm. Likewise all the injuries that are in existence having arisen from their natural causes. What has preceded resembles this. You would respond by saying: The Lawgiver, in His intention to legislate on account of *maṣlaḥa*, does not intend the aspect of injury, even though it necessarily flows from *maṣlaḥa*.

It also points to the views of the Muṭazila, who maintained that evil and injuries are not intended to occur.¹⁶ Their occurrence is against the divine will. Allāh is far above this in His Loftiness.

The response is that the statements of the philosophers pertain to intention with respect to formative creation, and our discussion does not relate to it. We are concerned with legislative intent. The distinction between the two has been elaborated in the *Book of Commands and Prohibitions*. It is known that the *shariʿa* has been laid down for the *maṣlaḥa* of the subjects in the absolute sense, as has been elaborated at the proper occasion.

Thus, in all that has been legislated for the acquisition of *maṣlaḥa* and the repelling of injury, the conflicting element is not intended. If it is found to occur in actual existence, it is due to the eternal power and will, and nothing in the earth and heavens is concealed from the knowledge, power and will of Allāh. The directive of legislation is a different matter. It has another meaning and arrangement according to the way it is laid down. The command and prohibition are not mutually dependent for their intended occurrence or non-occurrence. This (dependence) is the statement of the Muṭazila, and its nullity is recorded in the discipline of *Kalām*. Thus, the intention to legislate is one thing and the intention to create another; there is no dependence between them.

Sub-Issue: Unusual Circumstances

If, however, the interest or the injury lies outside the ambit of the normal – that is, existing alone – they are intended to be acknowledged by the Lawgiver. Yet, this is subject to examination. It is, therefore, necessary to illustrate it and then extract the ruling about it, with the power of Allāh.

The illustration is the consumption of carrion by one in duress, the consumption of filthy and injurious things under duress, the execution of the murderer, the amputation of the hand of the brigand – and on the whole all the *ḥudūd* – for deterrence, the amputation of the mangled arm, the extraction of the tooth due to pain, the letting of the veins and cupping as well as other things intended for medical treatment. In things resembling these matters, if they stand separated from what is usual, the prohibition turns away from them. On the whole, in all those things in which there is a conflict of evidences, the two aspects will be equal or one will be preferred over the other.

If the two aspects are equal, there is no rule for either side from the perspective of the subject – that is, when the equality appears as a requirement

of the evidences. Perhaps, this does not occur in the *sharīʿa*. If their occurrence is assumed, then there is no preference of one side over the other except by whim, there being no evidence. This is null and void in the rules of the *sharīʿa* by agreement. That the intention of the Lawgiver is related to both sides, for commission and omission, is not proper to assert, because it becomes a duty to do the impossible. As we have assumed equality of the two sides in a single act, it is not possible that we command it and prohibit it at the same time. It is also not possible that the intention is not related to one of these two sides, for we have presupposed the application of the command and prohibition at the same time, as they are signs of the intention on the whole. This will be coming up at the proper occasion, God willing. Further, there is no command and no prohibition without a demand. Thus, the only course left is that it be related to one aspect and not the other. Yet, this has not been identified for the subject. It is, therefore, necessary to suspend judgement.

If one of the two aspects is preferred over the other, it is possible for us to say that the intention of the Lawgiver is related to the preferred aspect – I mean, in the eyes of the *mujtahid* – and is not related to the other side. Had it been related to the other side, preference would not have been proper. The rule then that judgement is to be suspended due to the equality between the two aspects is not proper with the existence of the preference of one side. It is possible to say: Both sides are acknowledged at the same time by the *mujtahid*, because each one of these sides could probably be the object of the intention of the Lawgiver, while we are obliged to follow only what is for us convincingly the intention of the Lawgiver, and not what is actually the intention for the issue. The preferred side, even if it is preferred, does not eliminate the possibility of the other side being the intention of the Lawgiver, except that this possibility is rejected for purposes of obligation in all but the case of equality of the two sides. The possibility is not rejected in theory, however, and it is from here that the principle of *murāʿāt al-khilāf* originated for a group of the Shaykhs (jurists).¹⁷ The first possibility exists according to the method of those who hold that each *mujtahid* is right, while the second probability exists according to the method of those who hold that only one *mujtahid* is right.

In any case, what can be concluded from all this is that the aspect that is not preferred is not acknowledged as an objective by the *sharīʿa*¹⁸ when it exists together with the preferred aspect. Had it been intended by the Lawgiver, the command and the prohibition would have converged on a single act, and this would have led to the duty to do the impossible. The rule that applies to all cases subject to *ijtihād* is the same, irrespective of whether we say that each *mujtahid* is right. There is no difference then whether the preferred aspects pertain to normal situations or to unusual circumstances. The analogy is continuous and the proof absolute in both types. This is what we intended to elaborate.

Suppose it is said: Is it not so that the side not preferred (has been overcome) is intended by the Lawgiver through a secondary intention, because the objectives of the Lawgiver are divided into these two types?

The response is that the secondary intention is established when it does not conflict with the primary intention. If it does clash, it is not intended either through the primary intention or through the secondary intention. This is mentioned in the relevant section of this book. From Allāh comes all success.

The Sixth Issue: Interests and Injuries Pertaining to the Hereafter

As the purposes (objectives) are of two types, those of this world and those of the Hereafter, when the discussion about those of this world has taken place, it is now required that the discussion be about the *maṣāliḥ* and *mafāsīd* of the Hereafter. We, therefore, say that these are of two types:

First: the interests are pure with no mixture of one side with the other, like the blessing of the residents of heaven and the perpetual torment for those in hell, may Allāh protect us from the fire and make us enter heaven through His mercy.

Second: the interests are mixed, and this applies only to those who profess the unity of God, especially when they are in hell (for a period). When Allāh makes them enter heaven through His mercy they will revert to the first type. All this is in conformity with what is laid down by the *shariʿa*, because reason has no role to play in matters pertaining to the Hereafter; the rules of the Hereafter are derived from transmitted knowledge.

As for this second type being mixed, it is obvious, because the fire cannot deprive them of the occasions of prostration nor the content of their faith. This is an apparent interest. And, it will only affect them to the extent of their deeds when all their deeds were not in the service of evil. The fire will not affect them in the way it will affect those who did not do any good things at all. This is sufficient in terms of the interest arising from faith and good deeds. Thereafter, the hope attached to the heart of the believer will provide him some solace, which is available to him despite torment, for it will provide a sigh of relief in the desperation arising from the fire. To this are added a number of specific issues that have been brought down by the *shariʿa* and that are available to the person who seeks them empirically.

As for the first pure type, it is indicated in the *shariʿa* through a number of evidences. These are like the words of the Exalted: “No-wise will the (punishment) be lightened for them, and in despair will they be there overwhelmed”,¹⁹ “But those who deny (their Lord) – for them will be cut out a garment of fire: over their heads will be poured out boiling water”,²⁰ and “Therein shall he neither die nor live.”²¹ This state will be more precarious than the fire itself. All such verses indicate the exclusion from the mercy of God.

There are other verses and traditions that are about heaven indicating the absence of torment, hardship and injury: “The righteous (will be) amid gardens and fountains (of clear-flowing water). (Their greeting will be): ‘Enter ye here in peace and security.’ And We shall remove from their hearts any lurking sense of injury: (they will be) brothers (joyfully) facing each other on raised couches. There no sense of fatigue shall touch them, nor shall they (ever) be asked to leave”;²² and “Peace be upon you! Well have ye done! Enter ye here, to dwell therein (forever).”²³ There are other evidences, and they are all known.

Our Lord has elaborated this by saying about heaven, “You are my mercy” and saying about hell, “You are my torment.”²⁴

Suppose it is said: How can this be correct for it is established that in the fire there are levels with some being harsher than others, just as it has been stated about heaven that in it there are grades some above the others? It has also been said about some of the inmates of hell that they will be kept in the upper levels even though they will remain there forever.²⁵ About heaven it has been said that part of its blessings will be denied to some, like the person who consumed wine all his life and died without repenting.²⁶ If there are levels in the fire – may Allāh protect us from them – with some being harsher than others, then the one lower will be lesser in severity than the one higher. This lesser severity requires the attribute of mercy that attains some kind of interest (*maṣlaḥa*). Further, the extent to which the torment will reach a person will be less in comparison to the one supposed to be above him, just as it will be more severe as compared to the one below him. If some leniency is contemplated whatever it relates to, then it amounts to an interest (*maṣlaḥa*) within the *mafsada* (injury) or torment. It is the same with the grades of heaven on the other side. Recompense is in proportion to deeds. If the obedient deeds are less due to the excess of disobedience, the recompense will be in this proportion. It is also known that the status of the one who enters heaven later (after staying in hell for some time) is not like the status of the one who never disobeyed his Lord and spent his entire life in a state of obedience. It will be due to his earlier causal acts, and his recompense for obedience in the Hereafter will be blessings tainted by his excessive opposition. This is the meaning of mixing up with injury. If this is the case, then the two types taken together are actually a single category.

The response is that it is not correct at all, on the basis of transmission, that blessings of heaven will be mixed up with torment or that there is injury in it in any form or meaning. This is what is required by the transmitted *shari‘a*. Yes, reason cannot convey this, because the states of the Hereafter are not in conformity with the requirement of reason. It is also not proper to say about the fire that in it there is for the perpetual inmates mercy requiring some form of *maṣlaḥa*. It is for this reason that the Exalted has said: “No-wise will the (punishment) be lightened for them, and in despair will they be there

overwhelmed”;²⁷ There will be no state there in which they will find relief, however trivial. How can that be, for that is the world of torment? May Allāh protect us from it.

What has been transmitted about the deprivation of the drunkard pertains to the grades. The one who has been deprived will not feel pain on account of that, just as no one will feel any pain due to the lack of the reproductive urge. As for the upper level of hell, it is a particular case, like the testimony of Khuzayma, or the (deficient) sacrifice made by Abū Burda. The force of definitive principles based upon induction is not to be demolished through such particular cases. Nevertheless, it is necessary to examine here the different grades and levels in so far as legal principles can be structured upon them and not for another reason.

The reason is that the differences in grades, even though they are different, do not necessitate deficiency or contradiction. This means that if you were to say, “So and so is a scholar”, then you have attributed scholarship to this person in a manner that is unqualified and leaves no doubt in his having attained perfection in scholarship. If, however, you were to say, “So and so is above him in terms of scholarship”, then this means that the second person has attained a grade in scholarship that is above the grade of the first. It does not imply that the first is to be attributed with ignorance of any type whatsoever. It is the same if you were to say, “The status of the prophets in heaven is above that of the scholars.” This statement does not convey a deficiency with respect to the scholars in terms of blessings nor does it imply a lowering of their status with something opposing it. In fact, the scholars are granted a blessing that is without blemish, but the prophets, may God’s blessings and peace be on them, are above this in terms of blessings that are again without blemish. Likewise the statements about torment with respect to the hypocrites and others. They will all face torment in which there is no relief, but some of them will be subjected to greater torment as compared to the others.

It is for this reason that when the Prophet (pbuh) was asked about the best families of the Anṣār, he responded in an order showing blessings. He said, “The foremost families among the Anṣār are Banū al-Najjār, then Banū ‘Abd al-Ashḥal, then Banū al-Ḥārith ibn al-Khazraj, and then Banū Sā‘ida.” He then said, “There is great blessing in all the families of the Anṣār.”²⁸ He thus removed any doubt of a contradiction, in so far as the verb form for preference is employed in this manner, as in the words of the Exalted, “Nay (behold), ye prefer the life of this world; but the Hereafter is better and more enduring.”²⁹ The Prophet’s according of a higher priority to some families as compared to the others was not intended to reduce the status of those not mentioned first. Had he intended this, it would have amounted to criticism on his part rather than praise. The tradition elaborates this established meaning, as at the end it states: “We met Sa‘d ibn ‘Ubāda and he said: ‘Have you not seen that the Prophet of Allāh (pbuh) gave preference to the Anṣār and mentioned us at

the end?’ He (the Prophet) said: ‘Is it not enough for you that you have been counted among the better people?’³⁰ Being ahead in the order, however, requires the enhancement of merit, but it does not require the description of the latter with opposite attributes, neither less nor more.

The order of preference prevails in the same manner among persons, classes and traits. Allāh, the Exalted, has said: “Those messengers We endowed with gifts, some above others”,³¹ “We made some prophets to excel others.”³² A tradition says: “A believer who is strong is better and dearer to Allāh as compared to one who is weak, but in each one there is good.”³³

The result of this is that giving an order for persons in a class according to the reality of the class is not possible; rather, it is according to the merits of some persons who have traits and attributes that are external to the reality of this class. This is an excellent concept, and for one who understands it, the obscurities and difficulties of the *shari‘a* become easy, as in the case of the order of merit among the prophets, God’s peace and blessings on them all, the strength and deficiency of faith, as well as other issues of *fiqh* along with those concepts of the *shari‘a* of which many lose track as a result of ignorance of this concept. Success lies with Allāh.

The Seventh Issue: The Intention Underlying Legislation to Secure Interests

As it is established that the Lawgiver has intended through legislation the securing of interests of the here and the Hereafter, then this is done in a manner that does not disturb the system, neither with respect to the whole nor the part, and irrespective of the interests being those of necessity, needs or the complementary values. If these are laid down in a manner that makes it possible to upset their system or rules, then the legislation is not meant for them, for in such a case these will not be interests; rather, it will be better to consider them injuries. The Lawgiver, however, intends that these be interests in the absolute sense; therefore, it is necessary that they be laid down in a manner that they are eternal, universal and general for all types of obligations and subjects, and under all circumstances.

This is how we have found the form of these interests. Praise be to Allāh.

Further, the explanation will appear that the three structures are universals in the *shari‘a*, and are not specific on the whole. Even when they are lowered to the level of the specific they are lowered in the form of universals. When some of these are made specific, it is from the perspective of the universal. Likewise, if they are universal then the specific cases are included within them. Thus, their examination as universals is lowered down to the specific, and such lowering does not go against their being universals. If this concept is established, it indicates the perfection of the system of divine legislation, and

the perfection of the system prevents the disturbance of the basis for which legislation is made – that is, for interests.

The Eighth Issue: Worldly Interests are Acknowledged from the Perspective of the Hereafter

The interests that are secured by the *shariʿa* and injuries that are repelled are acknowledged in so far as they establish worldly life from the perspective of life in the Hereafter.³⁴ They are not acknowledged from the perspective of personal whims in the securing of ordinary interests or the repelling of usual injuries. The evidence for this is from several perspectives:

First: as will be coming up, God willing, the *shariʿa* came down to take out the subjects from the pressures of their whims so that they may become the servants of Allāh.³⁵ If this meaning is established, it cannot coexist with the assumption that the *shariʿa* has been laid down in accordance with desires of humans with the demand for their worldly benefits whatever these may be. Our Lord, the Glorious, has said: “If the Truth had been in accord with their desires, truly the heavens and the earth, and all beings therein, would have been in ruin!”³⁶

Second: as has preceded, the benefits accruing to the subject are usually mingled with harms, just as harms carry certain benefits within them. It is like our saying that as human life is sacred, protected and required to be maintained, if the matter revolves between the revival of life and the destruction of property in doing so, or its destruction and the preservation of property, the preservation of life is to be preferred. If its preservation clashes with the destruction of *dīn* (religion), the preservation of *dīn* has a higher priority even though it leads to the destruction of life. This is the case in *jihād* against the unbelievers, the killing of the apostate, as well as other matters. Likewise, if the preservation of a single life stands in the opposite balance with the destruction of many lives in battle, the preservation of many lives is to be given a higher priority. In the same manner, we say that life is preserved through eating and drinking, and there is an obvious and predominant benefit in this, even though there is hardship and pain in its initial acquisition, its present use, and its consequences and effects in the end.

Despite such presence, what is acknowledged is the predominant factor, which is the aspect of *maṣlaḥa* (interest) that is the foundation of *dīn* and *dunyā* (the spiritual and the temporal), and not factors based upon the pursuit of whims. Accordingly, all reasonable persons agreed upon this category as a whole, even though they did not comprehend the details of the law until the *shariʿa* brought them forth. Thus, they agreed as a whole in acknowledging the preservation of life in this world for this world or for the Hereafter, and denied the pursuit of whims as a result of this. The reasoning of these persons, however, was not based upon sound grounds due to the absence of the *shariʿa*.

When the *shariʿa* arrived, it elaborated all this, and led the subjects, willingly or under compulsion, to establish the matters of this life for the sake of their life in the Hereafter.

Third: most of the benefits and harms are additional and not real. The meaning of additional is that they are benefits and harms in certain circumstances and not others, with respect to some persons and not others, or at certain times and not others. Thus, eating and drinking are beneficial for humans on the face of it. This is true for the existence of a need for eating, the food consumed being delicious and good, not repulsive and sour, not leading to injury sooner or later, with its acquisition not resulting in present or later injury to the person himself or to another. All these factors seldom come together. There are many benefits that amount to harms for some, or are harms at one time and not at other times. This is all evident in the case of interests and injuries that are lawful or prohibited for the maintenance of life and not for the satisfaction of desires. Had they been laid down as such no harm would have resulted from the pursuit of whims, but this is not so. It indicates that interests and injuries do not pursue whims.

Fourth: intentions with respect to a single matter differ in so far as the execution of the intention of one who benefits from it may harm another whose intention differs. The existence of disagreement in most cases prevents the *shariʿa* from being laid down in conformity with human purposes. The matters of the *shariʿa* are suitably arranged by laying it down in an unqualified manner, irrespective of the individual purposes conforming with it or opposing it.

Sub-Issue: Resulting Rules

When all this is established, rules are based on it.

Among these is the rule that it cannot be said categorically that the basis for benefits is permission and for harms is prohibition, as has been determined by al-Rāzī.³⁷ The reason is that real benefit and real harm are not actually to be found, and they exist as additional attributes.

If interests and injuries are to be referred to the communication of the Lawgiver – and we have seen that the communication is addressed in accordance with circumstances, persons and time, so that a particular benefit is permissible at a specified time, in specified circumstances or for a specific person, and is not permissible when things differ – then how can this statement be applied in the absolute sense – that is, the rule in benefits is permissibility and that in harms is prohibition?

Further, if benefits are not devoid of harms, and vice versa, then how can permission and prohibition come together in a single thing? And how can it be said: that the rule in *khamr* (wine), for example, is permission due to the benefit of creating enthusiasm and courage, as well as the elimination of worries. And along with this how can it be said that the rule is prohibition due

to the appropriation of reason and prevention from the remembrance of Allāh as well as prayer? The two (types of attributes) cannot be separated. And, like saying that the rule for the drinking of medicine is prohibition due to the harm in drinking it as a result of its repulsiveness, abomination and sourness, as well as saying that the rule in it is permission due to the benefit to be derived. The two are inseparable. The rule then in all these is permission and the absence of permission at the same time; this is impossible.

Suppose it is said that what is taken into account is the predominant, and that is the attribute to which the rule is attributed. What is besides that in effect is locked out and rejected.

The response is that this is what strengthens the rule that has preceded, because it is an evidence for the statement that the basis for benefits is not permissibility in the absolute sense, and the basis for harm is not prohibition in the absolute sense. The matter, in fact, is referred to what has preceded, due to which this world is to be established for the sake of the Hereafter even though some harm is expected on the way or some benefit is turned down.

Among them is also the fact that al-Qarāfi has raised an issue with respect to interests and injuries without answering it, and it is in his view binding on all the jurists who take into account interests and harms. He said:

If by interests and injuries we mean what their names imply, whatever these are, then there is no permissible thing that usually does not have benefits and harms. In the eating of good things and wearing of fine dresses there are benefits for the body and enjoyment for the living. There is, however, pain and harm in their acquisition, earning, processing, cooking, curing, properly chewing, soiling of the hands and other matters, so much so that if a reasonable person is given a choice between their absence and their existence, he will choose their absence. Who is it who will prefer the lighting of fire and being overcome with smoke as well as other things? It becomes binding then that such things do not remain permissible.

If, on the other hand, they mean something in the qualified and not the absolute sense, then such restricted meanings have numerous grades, and one is not better than the other. The principles of the Muṭazila have, therefore, denied moving away from the basic meaning of interests and injuries, for that would be foolish. It is not possible for them to say, however, that an interest is one about the rejection of which Allāh has warned, or an injury is one about the adoption of which Allāh has warned, and that is what is intended. Anything that is ignored by Allāh is not included in our purpose. Thus, we want what is acknowledged in the absolute sense without qualification. This solves the problem.

The reason is that we will say: The warning (of Allāh) and obligation in your view are subject to interest and harm, and it is binding for you, by virtue of reason, that Allāh warn against the giving up of interests and adoption of harms. If you derive the acknowledged benefits and harms from the warning,

the matter becomes circular. If the derivation of benefits and harms from the warning is valid, it becomes binding on you to permit that obligation can be ordained for giving up (rational) benefits and adoption of harms. In this case, the facts will be reversed. What is acknowledged will be obligation; anything that Allāh has obligated will be an interest (*maṣlahā*). This will annul your postulate.

As for the share of our scholars in this problem, it is difficult for them to say: Allāh has considered absolute interest and absolute harm by way of preference. The reason is that permissible things include these and have not been considered. In fact, they say: Allāh has eliminated some of these in permissible things and has considered others. When they are asked about the rule for those considered and not considered, the reply becomes difficult. The way for them is to depend upon actual induction alone, although this can only be done by being informed about some of the secrets of *fiqh*. Nevertheless, they say: “Allāh doeth what He willeth”,³⁸ and “Allāh doth command according to His will and plan.”³⁹ Allāh considers what He likes and leaves what He likes; no one can share this with Him. As for the Muṭazila, who impose this rule rationally, the matter is extremely difficult for them, because by opening this door many of the principles of the Muṭazila become shaky. This is what al-Qarāfi stated.⁴⁰

If you refer back to the initial statement of the issue as well as what has preceded before this, the problem no longer remains relevant. As for the opinion of the Asharites, induction throughout the *shariʿa* indicates what is considered and what is not considered, but in a manner that makes the rules of such consideration available. The definitive evidence for this is induction in the circumstances of those who persistently follow the *shariʿa* without being constrained to move out of the straight path, giving to each person his right as is due without disturbing the system, and without demolishing a fundamental principle of Islam. When there is deviation in this it is to the extent that lies within the bounds prescribed by the *shariʿa* and in accordance with each category of the law as well as each fundamental principle of obligation. Where this is attained by the knowledgeable scholars, suitable rules of each category become available to them, and this is mentioned in their books and explained in the discipline of *uṣūl al-fiqh*.

The same applies to the system of the Muṭazila, because they acknowledge interests and injuries as their reason leads them to, in their view. This is the perspective through which the maintenance of the world is completed as a whole and in its details by the interests or is upset through injuries. They deem the *shariʿa* as the uncovering factor for what is claimed as the object of their reason, without increase or decrease. Thus, there is no difference between them and the Asharites in the net result of the issue; they differ only in the identifying source. Their disagreement in this does not harm the view that interests in themselves are acknowledged and organized by the *shariʿa*.⁴¹

Imām al-Razī raised another similar disagreement when he discussed *‘azīma* (initial general rules) and *rukḥṣa* (exemptions), when he elaborated them by saying, “The permissibility of commission despite the existence of an obstacle.” He said:

It is ambiguous, because it leads to the necessary conclusion that prayers, fixed and discretionary penalties, *jihād* (war) and *ḥajj* be deemed exemptions. All these can be lawfully undertaken, but there are two (legal) obstacles in this. (The first is) the apparent meaning of the texts that oppose their binding nature, like the words of the Exalted, “He has chosen you, and has imposed no difficulties on you in religion”,⁴² and the tradition, “No damage is to be inflicted and none is to be borne.”⁴³ These are an obstacle in the way of obligation of these acts. The other is that the form in which humans are created is assigned integrity, “We have honoured the children of Adam”,⁴⁴ and “We have indeed created man in the best of moulds.”⁴⁵ This implies that the human being should not be destroyed through *jihād*, and no hardship and injury is to be imposed on him.

Further, *ijāra* (hire) is an exemption from the sale of non-existent things, and so is *salam* (advance payment). *Qirāḍ* (the *muḍāraba* form of partnership) and *musāqāh* (share cropping) are both exemptions from (the proscription of) uncertainty of wages. The hunted animal is an exemption from the consumption of animals with their blood. Nevertheless, these have not been counted as such. Induction through the *sharī‘a* implies that there is no *maṣlaḥa* in which there is no *mafsada*, and vice versa. It does exist even for unbelief and faith, though it amounts to little for the servant, so what would you think about the other things?

Accordingly, there is no rule in the *sharī‘a* that is not accompanied by a *shar‘i* (legal) obstacle. It is not possible to say that the meaning of obstacle is that it is secure against a preferred opposing factor. Thus, in the consuming of carrion is a preferred opposing factor. In such a case what is the meaning other than a concealed preferred obstacle, and in such a case, it covers the entire *sharī‘a*, because in each rule there is a concealed obstacle opposing it.⁴⁶

One who comes to rely on the two commentaries of *al-Tanqīḥ* and *al-Maḥṣūl* will be unable to lay down a rule for *rukḥṣa* (exemption). What has preceded, God the Exalted willing, will be sufficient for this point, along with what has been mentioned about *rukḥṣa* in the *Book of Aḥkām*.

Among them is also the rule that whoever understands this issue will come to understand a large number of verses of the Qurʾān and their rules. For example, the words of the Exalted, “It is He Who hath created for you all things that are on earth”;⁴⁷ “And He has subjected to you, as from Him, all that is in the heavens and on earth”;⁴⁸ and “Say: Who hath forbidden the beautiful (gifts) of Allāh, which He hath produced for His servants, and the things, clean and pure (which He hath provided), for sustenance?”⁴⁹ There are many other verses like these. These verses are not to be understood through

the apparent unqualified meaning, but with qualifications associated with them, in accordance with the indication of the *shariʿa* in the acquisition of interests and the repelling of injuries. Allāh knows best.

Among them is the statement made by someone who said: “The interests and the injuries pertaining to the Hereafter cannot be known except through the *shariʿa*. As for worldly matters, these are known through necessities, experience and practices, as well as acknowledged probabilities.” He said: “One who needs to know the compatible interests and injuries, distinguishing the preferred from the others, must present them to his reason⁵⁰ on the grounds that the Lawgiver has not intended these, and then he should base the *aḥkām* (rules) on his findings. No rule will go beyond this, except acts of worship for their *maṣāliḥ* (interests) and *maḥāsib* (harms) that cannot be assessed (by reason).”⁵¹ This is his statement.

The statement, in accordance with what has preceded, is subject to examination. As for what pertains to the Hereafter – that it cannot be understood except through the *shariʿa* – it is as he has stated. With respect to his statement about worldly matters, it is not so in all respects; rather, it is so in certain cases and not in others. It is for this reason that as the *shariʿa* came down in different periods, it explained the position of the people of the period and how they had deviated from the straight path moving out from the requirements of justice in their rules.

If the matter had been as he had said, in the absolute sense, the *shariʿa* would not have adduced proofs for things other than those belonging to the Hereafter. This, however, is not the case. The *shariʿa* has come down to establish the affairs of this world and the next together, even though the intention is to establish worldly matters with reference to the Hereafter.⁵² Accordingly, the fact cannot be excluded that it intends the establishing of worldly interests so that the way leading to the Hereafter is facilitated. The *shariʿa* has urged the undertaking of transactions, and has terminated many avenues of prevalent corruption with the utmost measures. The human situation makes it difficult to grant independence to reason to assess all the interests and harms in detail. The exception is if the person making the statement means that the identification of interests and harms is attained through experience and other matters after the *shariʿa* lays down its principles. In this there is no disagreement.

The Ninth Issue: The Supporting Evidences of Fundamental Principles Are Definitive

It is essential to rely upon an evidence to show that the Lawgiver has intended the preservation of the three fundamental principles: necessities, needs and complementary values. The evidence relied upon can either be definitive or probable. The fact that it can be a probable evidence is null and void, because

these are the foundational principles; in fact, they are the foundation of its fundamental principles. The fundamentals of the *shari'a* are definitive, as has been elaborated at the proper occasion. Thus, its foundational principles have greater importance for being definitive. If it had been permissible to establish them through probable evidences, the *shari'a* itself would have been probable both in terms of its foundation and details. This is null and void. It is essential that it be definitive; therefore, its underlying evidences are also definitive.

If this is established, then the definitive evidence upon which this principle relies must, on examination, be either rational or transmitted. A rational evidence has no relevance here, because it will amount to passing judgement of reason upon the *ahkām* of the *shari'a*, which is not correct. It must, therefore, be transmitted.

Transmitted evidences are either texts that have come down through a continuous (*mutawātir*) transmission, whose text does not admit to varying interpretation, or they are not such texts. If they are not such texts or have not been transmitted by those eligible for *tawātur* (continuous transmission), then they cannot be relied upon in such a case, because they do not convey definitive meanings and the attainment of certainty is the objective. If they are texts that do not accept varying interpretation and they have been reported through definitive chains, then these are what convey definitive meanings, unless they are subject to dispute among the scholars with respect to their existence.

Those who maintain that they exist acknowledge that they are not found in each issue that is assumed in the *shari'a*; rather, they are found on some occasions and not others. It has not been determined whether our issue lies among such occasions for which a definitive evidence is laid down.

Those who deny the existence of such evidences in the *shari'a* maintain that the adoption of transmitted evidences, when these are definitive, is dependent upon ten premises where each one of these is probable. A thing that depends upon the probable must necessarily be probable. Thus, they depend upon transmissions of language and opinions on grammar, the absence of homonyms and figurative terms, the absence of transmitted or ordinary meanings, the absence of concealed implications, the absence of restriction of general terms, the absence of determination of undetermined meanings, the absence of abrogation, the absence of prior or delayed implications, and the absence of rational contradictions. All these factors are probable.

Among those who acknowledge their existence are some who admit that the evidences in themselves do not convey definitive meanings, but when they are supported by observed or transmitted evidence, they do convey certain meanings. This certainly does not indicate that our issue belongs to such a category, because corroborating circumstances are not essential for every evidence, otherwise it would become binding that all the evidences of the law (*shar'*) be definitive. This is not so by agreement. If this is not binding and we find that most of the legal evidences are probable in their implication,

or in their text and meaning at the same time, especially with the need of the evidences to be examined in the light of the detail that has preceded, then it indicates that the gathering of circumstances imparting definitiveness and certainty is indeed rare.⁵³ This is so in the opinion of those who acknowledge them, and they do not exist at all in the opinion of others. This establishes that upon ascertainment the evidence of this issue is not ascertained.

It is not enough to say that consensus (*ijmāʿ*) is sufficient, for we will respond by saying:

First: the acknowledging of these three foundational principles is in need of proving the transmission of consensus through a continuous (*mutawātir*) transmission from all those who are eligible for consensus (*ijmāʿ*). This is difficult to prove, and perhaps you will not find it. We then say (this).

Second: if its existence is assumed, then it is necessary that there be a definitive evidence upon which they rely, and they should agree upon the fact that it is definitive. If they agree upon an evidence that is probable, then the issue will be probable, not definitive. It, therefore, does not convey certainty, because consensus becomes definitive upon the assumption that they have agreed upon an issue that is definitive, which has relied upon an evidence that is definitive. If they rely upon an evidence that is probable then there are people who deny that such a consensus is a binding proof.⁵⁴

Thus, proving the issue through consensus does not provide relief. Under such circumstances finding a way to establish these foundational principles as being acknowledged by the *sharīʿa* through a definitive legal evidence becomes difficult.

The evidence for the issue is established in another manner, which is the heart of the issue. The way is that in the proof of these three fundamental principles no one from among the jurists, who are eligible for *ijtihād*, can raise a doubt that these are the objectives of the *sharīʿa*.

The evidence for this is induction within the *sharīʿa*, and the empirical examination of the general as well as particular evidences that converge upon these matters through an inductive meaning that is not established by an individual evidence. In fact, it is established by evidences that have been added one to another, though they have different individual purposes, so that their combined implication comes to agree upon a single meaning. This is the same way in which the generosity of Ḥātīm is established among the masses and so is the valour of ʿAlī (God be pleased with him), and so also other matters. The jurists did not rely upon a particular evidence to establish the intent of the Lawgiver with respect to these fundamental principles. They also did not do so through a particular interpretation; rather, the meaning was derived by them through apparent and general meanings, through absolute and qualified meanings, and through specific cases and varying incidents in each category from among the categories of *fiqh* as well as its sub-categories. They continued doing so until they organized the evidences of the *sharīʿa* and found them

revolving around the preservation of these fundamental principles. For this meaning they also sought support from the associated circumstances whether these were transmitted or understood by rational means.

In this way a continuous reported form of knowledge was arrived at. Had they considered individual transmissions of reporters, the reports of each one of them, assuming their moral probity, would have communicated probable knowledge. Their agreement does not add anything to the derived probable meaning; however, collective agreement has a characteristic that is not available through separate meanings. Thus, the *khbar wāḥid* (individual report), for example, yields a probable meaning, but when another one is added to it the probable meaning is strengthened. In this way, adding another and yet another leads through the collective meaning to definitiveness that does not admit of contradiction. This applies to the meaning here too, because there is no difference between this and the collective meaning of reports with respect to definitiveness.⁵⁵

This was elaborated in the preliminary concepts of this book.⁵⁶

If this is established then, for a person who examines the implications of the texts and ponders over their meaning, it becomes easy to verify and establish the intent of the Lawgiver in establishing these fundamental principles.

The Tenth Issue: The Conflict between Subservient Interests Is Not Effective

These three universals are laid down for the securing of specific interests (*maṣāliḥ*); therefore, their impact is not changed by the conversion of particular rules.

There are examples for this. As for the necessities, punishments are prescribed for deterrence, even though we find that an individual is not deterred by the punishment awarded to him. There are many such examples. As for the needs, the example is the curtailment of prayer, which has been prescribed for the lightening of the impact of hardship. There is no hardship for the affluent king, but curtailment is permitted for him too. Loan (*qarḍ*) is permitted due to compassion for the needy, but it is valid even when there is no such need. As for the complementary values (*taḥṣināt*), purification is prescribed for cleanliness on the whole, even though some of its forms go against such cleanliness as in *tayammum* (purification with clean soil).

All these (exceptions) do not affect the legal basis, because the universal principle when it is established as a universal, the deviation of some individual rules from the requirement of the universal does not remove it from the status of a universal. Further, the rule that applies to a predominant majority is considered in the *sharīʿa* as a general definitive rule, because individual deviations do not constitute a universal that conflicts with such an established universal.⁵⁷

This is the nature of the universals based upon induction. These have been acknowledged on the basis of universals in the Arabic language, because they come closest to what we are concerned with as both belong to applied, rather than rational, forms. In the case of rational universals it is possible to conceive of a demolishing effect of the individual cases. This is like our statement, “What is established for one thing is established rationally for something that is similar to it.” The universal in this case, however, is not subject to conflict. If such deviation were possible it would not be correct to assign the rule to the stated proposition: “What is established for a thing is established for its similar.”

If this is the case, then universals based on induction are valid even if some particulars deviate from the implication of their meaning. Further, the deviating particulars may be deviating due to a rule that is external to the implication of the universal. In such a case the particular may not fall under this universal in the first place or it does fall under it but its inclusion is not obvious to us, or in our view. Nevertheless, it has been opposed in the particular by what is prior to it. Thus, in the case of the affluent king it may be said that hardship does affect him, but we do not assign the rule to him as it is negligible. In the case of penalties by which a person is not deterred, we may say that the interest secured is not deterrence alone, but another factor that is associated with expiation, because the *ḥudūd* (fixed penalties) are expiations for those liable under them, even though they act as deterrents as well against the bringing about of harm. Likewise many cases that are believed to be subservient to the universal.

In any case, the deviation of some particulars in the essential validity of forming universals for the protected interests should not be taken into consideration.

The Eleventh Issue: The Purposes of the *Shari‘a* Are Absolute and General

The purpose of the Lawgiver in spreading the protected interests (*maṣāliḥ*) throughout legislation is absolute and general. The interests are not confined to one category (*bāb*) or another, nor to one subject matter or another, and not even to one conforming subject matter to the exclusion of another. On the whole, the protected interests are operative in an unqualified sense throughout the universals and particulars of the *shari‘a*.

Among the evidences for this is the preceding reasoning about the unqualified meaning of the interests and that the legal rules are prescribed for the interests of the servants. When the rules are restricted they do not overturn the interests in the absolute sense, and the proof for this has been established. This indicates that the protected interests underlying the rules are not restricted.

One of the earliest jurists – and this was al-Qarāfi – believed that upholding the interests is dependent upon the view that in matters of *ijtihād* there is only one jurist who is right (that is, there is one true answer). The reason is that it is impossible for the preferred position to be the preferred view as well as its contradiction. In fact, when one view is preferred the other is turned down. This requires that the jurist who is right is just one, and he is the one who is upholding the preferred view. Others besides him are determined to be in error, because they have not ruled according to the preferred view. Thus, the analogical rule upheld by those who believe that all are right stands demolished. This is what he (al-Qarāfi) said.

In response from his Shaykh (al-ʿIzz) Ibn ʿAbd al-Sallām, that it is imperative for these jurists to say that the rule of “all are right” is applicable only in matters based upon consensus. As for matters disputed, the directive has not been issued by Allāh, the Exalted, that the rule is subservient to the preferred alone; rather, it is subject to probable reasoning, whether it is the preferred view or the view that is not preferred. He conceded that the rule of “everyone is right” does not permit the rule of securing interests for the preferred view. He used to say: It is necessary for the person upholding “everyone is right” to interpret the term “mistake” in the tradition of the ruler (*qāḍī*)⁵⁸ to mean causes,⁵⁹ due to the agreement that the mistake occurred in them. Assigning an agreed upon meaning to a statement of the Lawgiver is better. This is what he transmitted from him.

It appears that the principle is applicable for both views. The reason is that the *ahkām* (rules) according to those who say that “everyone is right” are subservient, because the *ḥukm* of Allāh in their view is subservient to the investigation of the *mujtahid*, while the protected interests are subservient to the *ḥukm* or are consequential to the *ḥukm*. Thus, interests and harms in matters of disagreement are established according to what is the predominant probable view of the jurist on the issue. There is no difference here between those who believe that all are right and those who maintain that the right is only with one. If the reasoning of a Mālikī jurist is dominated by the view that *ribā al-faḍl* in fresh fruits and vegetables is permitted, then this interpretation of the *maṣlaḥa* is preferred in his view, and likewise for the issue in his view as it is excluded from the rule of prohibited *ribā*. The person undertaking excess is undertaking what is permitted, and there is no harm in what is permitted either for this world or for the next. In fact, there is a protected interest in it because of which it has been permitted. If it comes to prevail over the mind of a Shāfiʿī jurist that *ribā* in these things is not permitted, then according to him it is included in the rule for prohibited *ribā*. The aspect of *maṣlaḥa* according to him is one that is not preferred and not the one that is preferred. It is the same for the issue according to his view as no harm is associated with the one who avoids it for this world and the next. Accordingly, the rule according to those who say everyone is right is similar to the one who says only one is right.

Conflict will arise if the preferred view is turned down by the same investigator. This issue, however, is from the perspective of two investigators with each one of them believing that the *ʿilla* (underlying cause) upon which he has structured the *ḥukm* is present in the subject matter as he has conceived on the issue according to his probable reasoning, not as it exists in actual fact. The reason is that it is not proper to say this except in cases of *ijmāʿ*. The two agree up to this stage, but differ thereafter. The one who believes that only one answer is correct issues the ruling based on the fact that this is the rule in the case itself and in his probable reasoning. The one who believes that all are right issued the ruling based upon the fact that there is no rule in actual fact; rather, it has arisen now.⁶⁰ Both sides based their ruling on the underlying cause (*ʿilla*) that they believe to be the *ʿilla* in actual fact as well.

At this point those who maintain that interests are binding and preferred, those who assert that interests and harms are the attributes of things, and those who assert that they are not attributes of things, all agree. This is a subject that requires greater explanation than this and it is one of the main topics of *uṣūl al-fiqh*. If this is established, there is no need for the objection that Ibn Sallām has raised. The difficulty in the issue has been resolved. Praise be to God.

Ponder over the fact that al-Juwaynī has recorded the agreement of the Muʿtazila about the claim of everyone being right in *ijtihād* and rulings. This requires the conception of the compatibility of the principle that everyone is right and the assertions of good and evil conceived rationally. This issue goes back to the intrinsic nature of things. The statement of al-Qarāfi is difficult to resolve on both assumptions. Allāh knows best.⁶¹

The Twelfth Issue: The Infallibility of the *Shariʿa*?

This blessed *shariʿa* is infallible, just as its bearer was infallible, and just as the consensus arrived at by his *umma* is infallible. All this is evident from two perspectives:

First: the evidences indicating this precisely and vividly are: “We have, without doubt, sent down the Message; and We will assuredly guard it”,⁶² and “A Book, with unequivocal verses.”⁶³ And, the Almighty said: “Never did We send a messenger or a prophet before thee, but, when he framed a desire, Satan threw some (vanity) into his desire: but Allāh will cancel anything (vain) that Satan throws in, and Allāh will confirm (and establish) His Signs: for Allāh is full of knowledge and wisdom.”⁶⁴ He communicated that He will preserve and establish His verses so that no one could mix them up and they will not be subject to alteration and change. The *Sunna* has not been mentioned, but it elaborates the verses and revolves around them. Therefore, it is a part of them and has recourse to them for meanings. The Qurʾān and the *Sunna* support each other and strengthen the meanings in

each. The Exalted has said, “This day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion.”⁶⁵ It is narrated by Abū ‘Amr al-Dānī in *Ṭabaqāt al-Qurrā’* from Abū al-Muntāb, who said, “One day I was with al-Qāḍī Abū Ishāq Ismā‘īl ibn Ishāq when it was said to him, ‘Why was change allowed for the People of the Torah and it has not been allowed for the People of the Qur’ān?’ Al-Qāḍī said, ‘Allāh, the Exalted, has said for the People of the Torah, “It was We who revealed the Torah (to Moses): therein was guidance and light. By its standard have been judged by the Jews, by the prophets who bowed (as in Islam) to Allāh’s will, by the rabbis and the doctors of law: for to them was entrusted the protection of Allāh’s book, and they were witnesses thereto: therefore fear not men, but fear Me, and sell not My signs for a miserable price. If any do fail to judge by (the light of) what Allāh hath revealed, they are unbelievers”,⁶⁶ but in the case of the Qur’ān it was said, “We have, without doubt, sent down the Message; and We will assuredly guard it”,⁶⁷ therefore, alteration is not allowed for them.’ ‘Alī said, ‘I went to Abū ‘Abd Allāh al-Maḥāmālī, and mentioned this to him. He said, “I have not heard a better statement than this.”’”

Further, there is the narration about the incidents of the flames prior to the coming of the Prophet (pbuh) when the devils were stopped from listening in stealth to what was said in the skies as they used to add to what they heard. They used to hear something and mix falsehood up to a hundredfold with what they heard. If they were prevented from doing so in the skies, they were also prevented upon the earth. Likewise, the eloquent experts of language expressed their inability to bring something similar to it. All this is part of protection, and this protection is eternal until the day of judgement. These matters as a whole should indicate to you the infallibility and the protection of the *shari‘a* against alteration and change.

Second: the consideration of the factual situation from the time of the Prophet (pbuh) up to the present to the effect that Allāh, the Glorious and Majestic, has created a large number of defenders of the *umma* for guarding and battling against attacks on the *shari‘a* both as a whole and in its details. As for the noble Qur’ān, Allāh has launched such protectors for it that even if a single word were to be added to it, thousands of small children, besides the older reciters, will swarm forth to cast the word out. This is the state for the *shari‘a* as a whole. Allāh has created for each field of its knowledge men at whose hands it is protected. Among them was a large group of people who spent a greater part of their lives for the preservation of the dialects and terms found in language of the Arabs. They went so far as to derive the language of the *shari‘a* from the Qur’ān and Ḥadīth. This is the first category of knowledge among the various categories of the *fiqh* (jurisprudence) of the *shari‘a*. This is so as Allāh has sent the revelation to His Messenger (pbuh) in the language of the Arabs.

Thereafter, He sent forth men who investigate the variations of this language and its spoken dialects, its grammatical forms and the multiple variations in its syntax. They derived rules from it with which they organized Arabic language as far as was possible. As a result of all this Allāh facilitated the understanding of His Book and communications of His Messenger (pbuh).

Allāh, the Glorious, then created men who search for the sound traditions of the Messenger of Allāh (pbuh), and for reliable reporters who possessed moral probity. They continued to search until they distinguished the sound from the weak identifying the history and soundness of claims about the adoption of various narrations. Thus, the sound corpus of the traditions from the Messenger of Allāh (pbuh) that is acted upon became established.

Likewise, Allāh, the Great, sent forth some of His servants for distinguishing the *sunna* from innovation (*bid'ā*). They searched for the objectives of the *shari'ā* within the Book and the *Sunna* as well as what was practised by the worthy ancestors and persistently performed by the Companions and their Followers (God be pleased with them all). They refuted the claims of the innovators and those who followed their whims until such time that the pursuit of truth was distinguished from the pursuit of whims.

Allāh, the Exalted, sent from among His servants reciters who acquired the recitation from the Companions (God be pleased with them). They then taught those who came after them with the desire that there be agreement among the community about the compiled copies of the Qur'ān. They did this so that all may come to agree upon a single version and not a single disagreement may arise among the people.

After this, Allāh, the Exalted, sent people who battled for his *din*, driving away doubts with proofs. They pondered over the kingdoms of the heavens and the earth employing their imagination, devoting themselves to this night and day, secluding themselves for the task and succeeding in securing the attention of their Lord. They examined the wonders of the creation of Allāh in the earth and in the skies, and they are the ones who have knowledge of His creation, who rely on Him for bringing out the truth. If the religion of Islam was confronted by an opponent, or a critic disputed with them, they brought forth for him definitive proofs to drive away his doubts. They are the force of Islam and the supporters of the *din*.

Among these people, Allāh sent the leaders who derived knowledge from Allāh and His Messenger (pbuh). They derived the *aḥkām* (rules) whose meanings they interpreted in the light of the objectives of *shari'ā* as understood from the Qur'ān and the *Sunna*. They derived the rules sometimes from direct statements themselves, sometimes from their meanings, and at other times from the underlying wisdom of the statements. The incidents that had not occurred were measured against those that were mentioned, thus, easing the way for those who came later to adopt a way for doing this.

It is in this way that each discipline that was essential for understanding the *shari'ah*, or explaining it, was developed. This is the exact meaning of protection that was mentioned by the transmitted evidences. Success lies with Allāh.

The Thirteenth Issue: Preservation of the Fundamental Established General Principles

The principle that no disturbance in particulars can overturn the universals has been established for the necessities, needs and complementary values. Likewise we say that if a general principle is established in the *shari'ah* for any of these (three) or any one of them, it is necessary to protect it with respect to the protection of the universal in so far as it is applicable to the particulars. The particulars are intended and acknowledged to maintain the universal so that the universal is not demolished leading to the overturning of the interest intended by legislation.

The evidence for this is provided in different ways.

Among these is the issuance of reprimand for one who relinquishes duties without an excuse. This is like one giving up prayer, congregational prayer, the Friday congregation, *zakāt*, *jihād*, deserting the community or running away from it without there being any requirement to do so. The reprimand may be in the form of a threat or something else, like a threat of torment, the application of *hudūd* in obligatory matters, correction in matters not obligatory and whatever resembles these.

Among them are also the general obligations in this category. The reason is that they revolve around the three foundational principles. Commands and prohibitions in so far as they have come down with a certainty, with the threat being directed at the commission of the proscribed act or the omission of the commanded act, without any qualification or exception, indicate that the particulars are included within the fold of the universals as far as the protection of the universal is demanded.

Among the evidences is the fact that if the particulars were not intended to implement the universal, the command requiring the universal would not be sound in the first place. The reason is that the universal in so far as it is a universal is not the object of the intended obligation. The obligation is directed towards a rational purpose that is not attained externally, but within the particular. Directing the intention towards the universal for fulfilling the obligation would amount to an obligation to do the impossible. To bring about such a thing is prohibited, as will be coming up, God willing. Thus, if the universal cannot be attained without the attainment of the particulars, the legal (*shar'i*) intention is directed towards the particulars.

Further, the aim of the universal here is that affairs of the created beings function according to an order and a unified system in which there are no shortcomings and no disagreement. The ignoring of intention in the case of the

particulars results in ignoring the intention with respect to the universal. When there is such neglect, the universal is not regulated by the intention, while we have assumed that it is intended. This is disharmony. It is, therefore, essential that the intention be to attain the particulars, where one is not superior to the other, and the intention is directed with the certainty towards all particulars. This is what is required.

It may be said that this contradicts the earlier principle that the universal is not affected by the disruption of individual particulars.

The response is that the principle is sound, and there is no conflict in it because of what we are concerned with. What we are concerned with is acknowledged from the perspective of protection from an opposing factor, so that there is no doubt about the certainty of intention directed towards the particular. As compared to this, what has preceded is acknowledged from the perspective of an opposing factor directed towards the universal so that, if the particular deviates, it is due to the protection of a particular by a universal from another direction. This is like our saying: the protection of life is prescribed, and this is a universal that is intended by the Lawgiver; thereafter, retaliation (*qiṣāṣ*) is prescribed for the protection of life with the execution of a human being in retaliation and this amounts to the intended protection. It is, however, bound to overturn a particular from among the particulars of the universal, which is the destruction of this individual life due to an opposing factor being the offence against life. The loss of this particular within the universal is due to the protection of another particular within its universal, which is the life of the victim. It therefore amounts to the protection of an actual particular within the universal and the overturning of an actual particular, but from the perspective of the protection of the universal from both perspectives. Likewise all issues that occur in this category.⁶⁸

Accordingly, the deviation of one of the particulars from the requirement of the universal, where there is no opposing factor, is not lawful according to the *sharīʿa*, but if there is an opposing factor then it refers to the protection of this universal from another perspective, or is due to another universal. In the first case, then, the deviation affects the universal, while in the second case it is not a deviation that has an impact on the universal.

NOTES

- 1 The following text has been excerpted from our book *Islamic Jurisprudence* by way of explanation: Perhaps the most important feature of the *maqāṣid* is their dual thrust. Al-Ghazālī discusses this dual nature in detail in his book called *Jawāhir al-Qurʾān*. This point has been ignored by almost all the later jurists, except for al-Shāṭibī. The dual feature of the *maqāṣid* is evident in the use of the terms *ibqāʾ* and *ḥifẓ*, which we may call preservation and protection. Al-Shāṭibī considers these the two aspects of *ḥifẓ*. The first he says is “what affirms its elements and establishes its foundations.” The second is “what repels actual or expected disharmony.” The focus of later jurists, and hence that of modern scholars, has been on the aspect of protection alone. Each purpose, however, has a positive or aggressive aspect and a negative or defensive aspect. From the positive aspect, the interest is secured by establishing what is required by the *sharīʿa* through each of its *maqāṣid*. Thus, the interest of *dīn* is secured by the creation of conditions that facilitate worship and establish the other essential pillars of Islam. The interest of life is secured by creating conditions for the existence of life. The interest of progeny is supported by facilitating and establishing family life. The interest of intellect is secured by promoting the means for the growth of the intellect. The interest of wealth is secured by creating proper conditions for the growth of wealth. From the defensive or the protective aspect, interests are secured by preventing the destruction or corruption of the positive aspect. Thus, *jihād* is prescribed for defending *dīn*, while prayer, fasting, pilgrimage, and *zakāt* help establish it. It is the duty of the *imām* to ensure proper conditions for both, while it is binding upon each subject to fulfil these duties, individually and collectively. Life is preserved through the provision of sustenance and the maintenance of good health, while it is protected or defended through the provision of penalties for those who destroy life without legal justification. *Nasl* is promoted through the maintenance of healthy family life and the institution of marriage, while penalties are provided for those who would corrupt it and destroy its values. The preservation of *ʿaql* is achieved through the provision of education and healthy conditions for its growth, while penalties are provided for the consumption of substances that destroy the intellect. Preservation of wealth is achieved by encouraging its growth, while theft or misappropriation of wealth is punished through penalties. Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Islamabad: Federal Law House, 2007), 272–73 (footnotes omitted).
- 2 This was stated by Imām al-Ghazālī. He maintained that all nations protect these interests in some form or the other, otherwise their societies collapse. H.L.A. Hart says that even positivism acknowledges a “minimum content of natural law.” This minimum content is similar to the five interests mentioned. The issue also relates to the jurisprudence of interests.
- 3 Does this pertain to *imāma kubrā* or *imāma ṣuḡhrā*? Perhaps to both.
- 4 This is a unique category added to the three categories. We are not sure if Imām al-Ghazālī mentioned these additional supplementary categories. They may be conceived as baskets hanging from the three main categories. The classification appears to be very interesting and highly useful.
- 5 It may be argued that *ribā* cannot be included in this supplementary category as it has been declared war against Allāh and His Prophet by the Qurʾān. He is declaring it a necessity, nevertheless.
- 6 This is an indication of what has been recorded in *Sunan Abi Dāwūd (Book of Jihād)*, Tradition No. 2532. It is also recorded by al-Bayhaqī relying on Abū Dāwūd and Abū ʿUbayd.
- 7 Al-Qarāfī says in distinction number fifty-eight: The rule is that whenever the consideration of the objective is dropped, the means are also dropped, for they are subsidiary to it for the

- rule. This rule has been opposed in the case of *ḥajj* when the razor is passed over the head of the person who does not have any hair, although this is a means for the removal of the hair. This is in need of an evidence indicating that it is desired for itself, otherwise it becomes a difficulty in the way of the rule.
- 8 It is part of tradition that begins with the words, “What is lawful is evident and what is unlawful is evident ...” It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 126, Tr. No. 52.
 - 9 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 12, 81, Tr. No. 6783. This tradition creates a problem for the *niṣāb* of property in the case of theft (*sariqah*). It is for this reason that some writers do not give the meaning of “egg” to the word *bayḍa* here.
 - 10 It is to be found in Abū Dāwūd, *al-Zuhd*, No. 320.
 - 11 It is recorded by al-Bukhārī, *al-Tārikh al-Kabīr*, vol. 2, 88; Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, vol. 1, 192; and al-Bayhaqī, *al-Sunan al-Kubrā*, vol. 10, 191–92.
 - 12 The learned Author makes a very important statement here. As we have indicated elsewhere in this volume, all nations have higher values that they deem important and their legal systems work to preserve them. In the case of natural law this is obvious, but even the Positivists acknowledge the existence of such ultimate principles. For example, H.L.A. Hart says that even Positivism acknowledges “a minimum content of natural law.” By this he means certain essential interests that have to be preserved. The important point, which the Author identifies, is that each nation differs with respect to the details of these values and also in the way these principles are implemented.
 - 13 Qurʾān 21:35.
 - 14 Qurʾān 67:2.
 - 15 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 320, Tr. No. 6487.
 - 16 The editor says: “The author of *Īthār al-Ḥaqq* (p. 277) has narrated from al-Shahrestānī the statement of the book called *Nihāyat al-Iqdām* that it is only proper to link the will of Allāh to acts to the exclusion of the work of subjects pertaining to obedience and disobedience. It is, however, the well-known position of the Asharites that the divine will is related to disobedience as well.”
 - 17 This is a principle of giving operation to the evidence of the opponent, when another evidence is going against it. The editor maintains that this method was opposed by Qāḍī ʿIyāḍ as it goes against *qiyās sharʿī*.
 - 18 That is, for purposes of obligation.
 - 19 Qurʾān 43:75.
 - 20 Qurʾān 22:19.
 - 21 Qurʾān 20:74.
 - 22 Qurʾān 15:45–48.
 - 23 Qurʾān 39:73.
 - 24 It is part of a tradition that is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, 595, Tr. No. 4850.
 - 25 The author is here pointing to what is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 193, Tr. No. 3883 to the effect that a little mercy may be shown to some on the recommendation of the Prophet (pbuh).
 - 26 The author is here pointing to what is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 10, 30, Tr. No. 5575.
 - 27 Qurʾān 43:75.
 - 28 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 115, Tr. No. 3789 and 3790; Muslim, *Ṣaḥīḥ*, vol. 4, 1949–50, Tr. No. 2511.
 - 29 Qurʾān 87:16, 17.
 - 30 As in the previous note.
 - 31 Qurʾān 2:253.
 - 32 Qurʾān 17:55.
 - 33 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 2052, Tr. No. 2664.

- 34 Editor's Note: The editor maintains that in the previous issues he has been claiming that the interests are linked to the predominant and the usual cases for the preservation of worldly life. The earlier meaning has now to be qualified in the light of this assertion.
- 35 That is, by choice, just as they are His servants by compulsion.
- 36 Qurʾān 23:71.
- 37 Editor's note: The learned editor says that Imām al-Rāzī's statement can be taken in the absolute sense after verification that a thing is beneficial or harmful through induction within the purposes of the *shariʿa*. It cannot be taken to mean that he is implying benefit and harm in the absolute sense in all circumstances. The editor indicates that it is for this reason that the eighth issue should be taken as a qualification of the content of the fifth issue. The statement of al-Rāzī may be found in *al-Maḥṣūl*, vol. 1, 157 passim.
- 38 Qurʾān 14:27.
- 39 Qurʾān 5:1.
- 40 That is, the lengthy quotation from al-Qarāfi ends here. In one edited version of the book, the editor states that the quotation is from *al-Nafāʾis*, vol. 1, 352–53, and its discussion is in the commentary by al-Asnawī. *Al-Nafāʾis* is a commentary by al-Qarāfi on Imām al-Rāzī's *al-Maḥṣūl*.
- 41 It is to be noted here that the Author is trying to reach the conclusion that the *shariʿa* is the decisive factor in the identification of interests and harms – that is, *maṣlaḥa* and *mafsada*. Even the Muʿtazila, he says, affirm this. Nevertheless, the fundamental difference between the Muʿtazila and the Asharites is to be recalled. As al-Qarāfi says to the Muʿtazila above, “The warning (of Allāh) and obligation in your view are subject to interest and harm, and it is binding for you, by virtue of reason, that Allāh warn against the giving up of interests and adoption of harms.” In other words, it is binding upon Allāh to lay down the laws according to interests and harms that are independently recognized by reason. The issue is to be grasped in the context of the independent authority of reason. Can laws be made according to what reason considers to be good or bad, or *maṣlaḥa* and *mafsada*? The answer has to be that it is the *shariʿa* that governs and not reason. The Author discusses something similar at the end of this section.
- 42 Qurʾān 22:78.
- 43 It is reported through different channels. The report from ʿUbāda ibn al-Ṣāmit is in Ibn Māja, *Sunan*, vol. 2, 784, Tr. No. 2340.
- 44 Qurʾān 17:78.
- 45 Qurʾān 95:4.
- 46 The quotation from Imām al-Rāzī ends here.
- 47 Qurʾān 2:29.
- 48 Qurʾān 45:13.
- 49 Qurʾān 7:32.
- 50 The editor says that this resembles the view of the Muʿtazila.
- 51 This is a quotation from al-ʿIzz ibn ʿAbd al-Sallām, *Qawāʿid al-Aḥkām*.
- 52 This is the main argument of the Author in this issue.
- 53 The Author has differed on certain important issues with the majority of the jurists. We have pointed out earlier that he considers the *ḥikma* (underlying wisdom) to be the *ʿilla* on many occasions, while the jurists do not define *ʿilla* in this way, even though Imām al-Rāzī has acknowledged that *ḥikma* (underlying wisdom) can be an *ʿilla*. Here, and in many other places in this book, he is talking about another concept where he differs with the jurists. He alters the meaning of *qatʿi* as it is understood by the jurists. He uses the terms *qatʿi al-sanad* and *qatʿi al-dalāla*. When the jurists say that a *dalil* is definitive or *qatʿi*, they simply mean that the evidence has been reported through continuous means. This is what the Author means by *qatʿi al-sanad*. In the system of the jurists, there is no such thing as *qatʿi al-dalāla* – that is, an evidence with a definitive meaning. To elaborate the strength of meanings, the Ḥanafī jurists

use a whole structure of terms like *zāhir*, *naṣṣ*, *mufassar*, *muḥkam*, *khafī*, *mushkil* and so on. The Mutakallimūn use their own terms like *zāhir*, *naṣṣ* and so on. Thus, when the Ḥanafis say that the *farḍ* (definitive obligation) is proved by a definitive evidence, they only mean one that is *qatʿī al-sanad*, they do not mean that it is *qatʿī al-dalāla* as well. Nevertheless, it was Imām al-Rāzī who introduced the term *qatʿī al-dalāla*, which was followed by other writers, even by some Ḥanafis. The terms used by the Author are, therefore, to be read with care.

- 54 Here again, the Author is taking a minority view and projecting it as that of the majority. What he is asserting is that *ijmāʿ* (consensus) in order to be definitive (*qatʿī*) has to rely on a *sanad* (supporting evidence), which should also be definitive. This view is not held by the majority. The reason is that if there exists a definitive evidence, on which consensus is relying, then what is the use of *ijmāʿ* when the evidence itself can, and directly, provide the definitive rule? The main purpose of consensus is to take a probable rule and make it definitive. If it does not perform this function, then consensus is reduced to the level of analogy and other probable evidences, thus losing its basic meaning.
- 55 The conclusion drawn by the learned Author is that the fundamental principles are declared to be definitive on the basis of the method in which the *mutawātir maʿnawī* (definitive in meaning) is proved. This occurs when a number of evidences, which in themselves are probable, independently indicate the same meaning. To this he adds that the meaning established here is even stronger due to two reasons. First, the texts considered to prove the definitive strength of the principles are not a small number of evidences, but the meanings arising from all the evidences of the *shariʿa*. Second, this meaning is further strengthened by taking into account even the meanings arising from the derived rules. In this way, the fundamental principles are conclusively proved to be definitive.
- 56 This was done in the first few of the thirteen concepts discussed in the first volume.
- 57 This is the meaning assigned to a “general principle” in Islamic law. The meaning has to be grasped to understand how general principles work. A few exceptions do not demolish a general principle. It does not mean, however, that these principles can be restricted easily. Further, when an exception is acknowledged by the *shariʿa* analogy cannot be constructed upon that exception as that leads to the destruction of the general principle. This meaning of general principle is very important for understanding how the *maqāṣid* work, especially when two or more of them clash with each other. It is in this, and other ways, that he ties up the Māliki views with the Ḥanafī theory of general principles, and implements the meaning of the title assigned to his book: *al-Muwāfaqāt*.
- 58 The tradition is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 318, Tr. No. 7352: “When the *ḥākim* (judge) decides through *ijtihād* and gives the correct ruling, he has two rewards, but when he decides through *ijtihād* and makes an error he has one reward.
- 59 In other words, the term “mistake” does not mean that there is one right answer and another wrong answer, but the fact that the jurist has undertaken improper *ijtihād*.
- 60 Here too, as in many other cases, the Author is following the arguments given by the learned Imām al-Ghazālī. The Imām said that this is like choosing colours. The colour you select becomes the colour liked by Allāh. For the details, see *al-Mustasfā*, the chapter on *ijtihād*.
- 61 The truth is that the issue that “each *mujtahid* is right or only one is right” is one of the most complex discussions in *uṣūl al-fiqh*. The Ḥanafis maintain that only one is right. Imām al-Ghazālī in *al-Mustasfā* has upheld the opposite view. The issue gives rise to many complex philosophical and practical issues. Imām al-Qarāfī, on the other hand, has raised a very important point. The Author (God bless him) has tried his best to provide explanations, but has been forced to acknowledge in the end that the matter cannot be resolved very easily.
- 62 Qurʾān 15:9.
- 63 Qurʾān 11:1.
- 64 Qurʾān 22:52.
- 65 Qurʾān 5:3.

66 Qurʾān 5:44.

67 Qurʾān 15:9.

68 The Author is expressing a complex concept in equally complex and vague language. The main idea is that the particular instances falling within a principle are to be protected. Thus, the intention of protection must be directed towards these particular instances. In other words, these particular instances cannot be overturned if the main principle is to hold and apply. He then raises the point that this approach contradicts what was said before this about the irrelevance of the particular instances as far as the protection and survival of the universal is concerned – that is, why should the intention be directed towards the protection of the particulars? He explains this by saying that loss of life may occur either through the protection of another universal, as in the case of *jihād*, because of which we say that the universal of protection of life is not affected. In another case, life may be taken through retaliation. This does not amount to overturning a particular instance, because in actual fact we are preserving the universal by according protection to the lives of victims of attack by offenders, where the offence by the offender is an opposing factor. Thus, here too the protection of the particular instance and even overturning it, by taking life, amounts to preservation of the universal. This is a very important issue as the very rationality of the purposes of law and their use is questioned.

**THE SECOND CATEGORY: THE AIMS OF THE
LAWGIVER IN LAYING DOWN THE *SHARĪʿA*
FOR COMPREHENSION BY THE SUBJECT**

The second category pertains to the elaboration of the intention of the Lawgiver in laying down the *sharīʿa* for being understood. This includes a number of issues.

The First Issue: The Revelation of the Qurʾān in Arabic

This noble *sharīʿa* is in Arabic, and other non-Arab languages have no role to play in it. This, even though it is elaborated in *uṣūl al-fiqh*, means that there is no *ajamī* (non-Arab) statement in the Qurʾān, according to a group of *uṣūlīs* (experts in *uṣūl al-fiqh*), or that there are non-Arab words in it that were used by the Arabs. The Qurʾān came down in accordance with this, thus, some loan words occur in it that are not part of its essential speech. This discussion with this interpretation is not the purpose here. The discussion that is intended here is that the Qurʾān came down in the language of the Arabs as a whole. The demand for understanding the Qurʾān is, therefore, exclusively in this manner. The reason is that Allāh, the Exalted, says: “We have sent it down as an Arabic Qurʾān, in order that ye may learn wisdom.”¹ He said, “In the perspicuous Arabic tongue”,² “We know indeed that they say, ‘It is a man that teaches him.’ The tongue of him they wickedly point to is notably foreign, while this is Arabic, pure and clear”,³ and “Had We sent this as a Qurʾān (in a language) other than Arabic, they would have said: ‘Why are not its verses explained in detail? What! A foreign (tongue) and (a Messenger) an Arab?’ Say: ‘It is a guide and a healing to those who believe; and for those who believe not, there is a deafness in their ears, and it is blindness in their (eyes): they are (as it were) being called from a place far distant!’”⁴

There are other evidences too that indicate that it is an Arabic Qurʾān and has been brought down in the language of the Arabs. It is not a non-Arab Qurʾān and is not in the language of non-Arabs. Thus, one who wishes to understand it has to understand it in the language of the Arabs. There is no other way in which it can be understood. This is the purpose of the issue.

As far as the issue whether or not loan words have come down in it is concerned, it is not needed as the Arabs used these words in their language and communication was carried out through them with their meanings being understood. When the Arabs used them in their speech they became part of

their language. Do you not see that it does not absorb the words from non-Arab languages, unless its form and pronunciation is like Arabic characters, and this too is rare. In such a case, the words are attributed to the Arabs. If their form and pronunciation is not similar to the language of Arabs, or part of it is such, the Arabic language converts them to its own form not accepting it at all in the form that it has with the ‘Ajam. Some of these loan words are left in the grammatical forms that they have with the ‘Ajam, while others are reduced to the Arabic grammatical forms just like its own words. When this is done, these words are merged into the language just like its colloquial forms and initial forms. This is well known to the experts of Arabic and there is no dispute about it or difficulty. The disagreements referred to by later scholars,⁵ do not concern the construction of legal rules nor is any jurisprudential (*fiqhi*) benefit derived from it. All that can be said is that some dialectical issues can be based upon it that may concern matters of the tenets of faith. Allāh has relieved us of the burden of this discussion on account of the discussions undertaken by the experts of the Arabic language about loan words.

If we were to say that the Qur’ān was brought down in the language of the Arabs and that it is purely Arabic without an element of ‘Ajam in it, then what we mean is that it was revealed in a language that the Arabs were accustomed to in its specific words, moods and meanings. The meanings according to the nature of the language are such that the general word may yield the apparent meaning, the general word may convey the general meaning from one aspect and a specific meaning from another, the general word may be used in the meaning of the particular, and the apparent meaning may convey something other than the apparent. All this may be understood from the first part of the syntax, from its middle or from its ending. The initial part of the syntax may depend upon the end or the end may depend upon the beginning with speech being understood through meanings just as they are understood through gestures. A single thing may be known through a large number of words and a large number of words through a single term. All this is known in the language and cannot be doubted, nor will a person who is in any way related to the language doubt it.

If this is the case, then the Qur’ān and its meanings are to be understood through these meanings and modes of expression. Just as the languages of the ‘Ajam cannot be understood through the modes of the Arabic language, the Arabic language cannot be understood through modes of expression used in non-Arab languages: due to differences in their formation and modes. The major bases of this issue were pointed out by Imām al-Shāfi‘ī in his *al-Risāla* written on *uṣūl al-fiqh*. Many of those who came later did not identify these bases. It is, therefore, necessary to point it out. Success lies with Allāh.

The Second Issue: Interpretation of Arabic Text

The Arabic language, in so far as it consists of words, indicates meanings in two ways:

First: as far as the words and statements are unqualified, the language indicates the meanings in an unqualified manner. This is the primary form of indication.

Second: where the words and statements are qualified, the meanings indicated are subsidiary. This is the secondary form of indication.

The first method of indicating meanings is shared with all other languages, and the objectives of the speakers are directed towards this end. The mode is not confined to one nation to the exclusion of the other. For example, when an act is brought about, like Zayd standing up, and a speaker wishes to report that Zayd stood up, he does so without any difficulty. In this manner it is possible to report in Arabic the condition of those, who did not speak the Arabic language, along with their statements. This is also done in languages of the ‘Ajam as well – that is, a narration of the sayings of Arabs along with reports about their life. There is no difficulty in understanding this.

The second method of communication is something that is possessed exclusively by the Arabic language for narrating such incidents and reports. In such communication, each report requires certain factors that are meant to serve the reports, with respect to the incident, the narrator, the subject of the narration, the narrated fact and the report itself. Further, it requires the state of affairs, the trends and modes of expression like clarity, allusion, precision and detail, as well as other things.

You may, for example, say at the beginning of the report, “*qāma Zayd*” (Zayd stood up) if you are not concerned more with the subject of the report, but with the report itself. If you wish to place more emphasis on the subject of the report, you will say “*Zayd qāma*” (Zayd stood up). In response to a question or to depict his state, you will say, “*inna zaydan qāma*” (verily, Zayd stood up). In reply to one denying that he stood up, you will say, “*Wallāhi inna zaydan qāma*” (By Allāh Zayd stood up). To report to someone who expects that he will stand or expects a report about his standing up, you will say, “*Qad qāma zayd*” or “*Zayd qad qāma*” (Zayd stood up, Zayd is standing now). To counter someone who denies the fact, you will say, “*Innamā qama zayd*” (It is Zayd who stood up).⁶

Thereafter, the report can vary due to fact that you are praising him or looking down upon him, I mean the subject of the report, and as a result of using allusions or clear language. It can also vary according to what is intended in the narration of the report and what kind of situation is depicted, along with a large number of other factors that cannot be enumerated. All this revolves around the simple report about Zayd’s act of standing up.

The modes of expression due to which the meaning of a single statement can vary are not the primary objective; rather, they are complementary and

complete the meaning. The use of extended forms in this category adds to the eloquence, when there is nothing offensive in it. It is this secondary form due to which the statements in the Qurʾān and many of the narrations vary. The reason is that the Qurʾān narrates the story in some *sūrah*s from one perspective, in another from another perspective, and in a third from a third perspective. This is how reports have been laid down in it, and not according to the primary form of communication, except when it remains silent about some of the details in certain cases and expresses them in others. It is also according to the requirements of the circumstances and time. “And thy Lord never doth forget.”⁷

Sub-Issue: Difficulty in Translating the Qurʾān

If this is established, then it is impossible for a person who takes this second mode into account to translate Arabic speech into the language of the ‘Ajam, not to speak of the Qurʾān, and to convey it in a language that is not Arabic, unless the exact equality of the two languages is assumed with respect to the second mode.⁸ This would be like equality of expression in the two languages for the examples that have been given above. If this equality can be affirmed for the language of translation with the Arabic language, it will be possible to translate from one into the other. Establishing such an equality in unequivocal terms is extremely difficult. Perhaps, it is this that was indicated by the earlier logicians and by those who followed them from among the later logicians. Nevertheless it is not enough and does not apply to this situation.

Ibn Qutayba has denied the possibility of translating the Qurʾān on the basis of this second mode of communication. As for the primary mode, it is possible. It is on this basis that the communication of the *tafsīr* (commentary) of the Qurʾān, or its meanings, to the general public – or to one who is not able to understand its complete meaning – is deemed valid. It is permitted by agreement of the jurists of Islam. This agreement then becomes the proof for the validity of translation on the basis of the first mode of communication.

Sub-Issue: The Second Mode of Expression is Like an Attribute of the First

If the secondary mode of communication is considered together with the primary, it is found to be like an attribute from among the attributes of the primary. The reason is that it completes the statements and meanings in so far as these have been formed for understanding. Is it like an intrinsic attribute or an external attribute? This is a matter that is subject to examination in so far as legal issues are built upon it as a whole. Confining ourselves to what has been said about the matter is sufficient, because it is like a fundamental principle for the other varying assertions. Maintaining silence about this is better. Success lies with Allāh.

The Third Issue: The Unlettered *Umma*

This noble *sharīʿa* is of the unlettered,⁹ because those who were its addressees were such. Consequently, it runs its course on the basis of secured interests. This is indicated by several facts:

First: the first are texts that are continuous (*mutamātir*) in both word and meaning, like the words of the Exalted, “It is He who has sent among the unlettered a messenger from among themselves”¹⁰ and His words, “So believe in Allāh and His Messenger, the Unlettered Prophet, who believeth in Allāh and His Words.”¹¹ A tradition says: “I have been sent to an *umma* that is unlettered.”¹² The reason is that they did not have the knowledge of the fields of knowledge known to the earlier people.

The meaning of the word *ummī* is attributed to the word *umm* (mother) – that is, a person who continues in his original state in which he was given birth by his mother not being able to read one book or another. Thus, he maintains his original state of creation with which he was born. A tradition says: “We are the unlettered *umma*. We do not calculate and we do not write that the month is such and such.”¹³ The meaning has been elaborated in the tradition – that is: “We have no knowledge of (complex) calculations nor can we write.”¹⁴

Then there are also texts like the words of the Exalted, “And thou wast not (able) to recite a book before this (Book came), nor art thou (able) to transcribe it with thy right hand.”¹⁵ There are other evidences like this spread in the Book and the *Sunna*, which indicate that the *sharīʿa* was laid down with the attribute of being unlettered, because the addressees were such.

Second: the *sharīʿa* with which the Unlettered Prophet (pbuh) was sent to the Arabs, in particular, and to others besides them, in general, would either be in a form that conformed with the meaning that was assigned to them with respect to their being unlettered or it would not be in that form. If it was in that form then this is the meaning of the term *ummī* – that is, it is attributed to an unlettered people. If it was not in this meaning, it becomes necessary that it be in a form that was different from the one known to the Arabs, and they would not find it within themselves to know it. This goes against the facts in this case. It is, therefore, necessary that it be in a form that the Arabs knew. The Arabs,¹⁶ however, knew nothing more than what Allāh attributed to them with respect to being unlettered. The *sharīʿa* is, thus, of the unlettered.

Third:¹⁷ if it was in a form that was not known to them then it would not have had a miraculous nature for them, and they would have excluded it from the realm of the miraculous by saying: “This is something that we do not know of, because we are not accustomed to such speech, for our speech is well known to us and is understood by us, while this is neither understood nor is it known.” The *sharīʿa* in such a case would not have constituted any kind of proof against them.

It is for this reason that Allāh, the Glorious, said, “Had We sent this as a Qurʾān (in a language) other than Arabic, they would have said: ‘Why are not

its verses explained in detail? What! A foreign (tongue) and (a Messenger) an Arab?’”¹⁸ Allāh responded to their claim, by saying, “The tongue of him they wickedly point to is notably foreign, while this is Arabic, pure and clear.”¹⁹ They yielded to this argument, and it indicates that it was within their knowledge and something similar was known to them, along with their inability to produce something like it. The evidences for this concept are many.

Sub-Issue: Arab Sciences

Know that the Arabs were concerned with disciplines of knowledge that have been mentioned by scholars. Their thinkers were concerned with ethical values and the inculcation of sound character traits. The *shari‘a* (when it came) validated those that it considered to be sound and added to them. The traits that were unworthy were declared invalid. It elaborated the details of those that were beneficial out of these and those that were harmful.

Among these disciplines was astronomy and what relates to it like seeking direction on land and the sea, change in time through their movement, the identification of the change in the phases of the moon, as well as other things that fall into this category. These ideas have been expressed in the Qur‘ān on a number of occasions. For example, the words of the Exalted, “It is He who maketh the stars (as beacons) for you, that ye may guide yourselves, with their help, through the dark spaces of land and sea”,²⁰ His words, “And by the stars (men) guide themselves”,²¹ “And the moon, We have measured for her stations (to traverse) until she returns like the old (and withered) lower part of a date-stalk. It is not permitted to the sun to catch up the moon, nor can the night outstrip the day: each (just) swims along in (its own) orbit (according to law)”,²² “It is He who made the sun to be a shining glory and the moon to be a light (of beauty), and measured out stages for it; that ye might know the number of years and the count (of time)”,²³ “We have made the night and the day as two (of Our) signs: the sign of the night have We made dark, while the sign of the day We have made bright”,²⁴ “And We have (from of old), adorned the lowest heaven with lamps, and We have made such (lamps) (as) missiles to drive away Satans, and have prepared for them the chastisement of the blazing fire”,²⁵ and “They ask thee concerning the new moons. Say: They are but signs to mark fixed periods of time in (the affairs of) men, and for pilgrimage.”²⁶ There are other texts similar to these.²⁷

Among these is the discipline of astrology (planetary transits), the time of the coming down of rain, the formation of clouds, the movement of the whirling winds. The *shari‘a* elaborated the truth and falsehood in this knowledge. The Exalted said, “It is He who doth show you the lightning, by way both of fear and of hope: It is He who doth raise up the clouds, heavy with (fertilizing) rain! Nay, thunder repeateth His praises, and so do the angels, with awe: He flingeth the loud-voiced thunder-bolts, and therewith

He striketh whomsoever He will”,²⁸ “See ye the water which ye drink? Do ye bring it down (in rain) from the cloud or do We?”²⁹ “And do We not send down from the clouds water in abundance?”³⁰ and “And have ye made it your livelihood that ye should declare it false?”³¹

Al-Tirmidhī has recorded that the Messenger of Allāh (pbuh) said, “And have ye made it your livelihood that ye should declare it false?”³² means ‘the thanks you give’ by saying ‘The rain came down on us due to such and such transit and due to such and such star.’”³³ A tradition says, “Some of My servants are believers in Me and others are unbelievers.”³⁴ This is the tradition of planetary transits. There is a tradition that occurs in *al-Muwattaʿ* alone: “When the sea winds rise and then turn left, it is a sweet spring.”³⁵ ‘Umar (God be pleased with him) is reported to have said to ‘Abbās (God be pleased with him), while he was standing at the pulpit with the people below, “How many stages are left for Thurayyā (Pleiades)?” ‘Abbās (God be pleased with him) replied, “Such and such stage is left.”³⁶ Texts like these distinguish the truth from falsehood in the case of planetary stages and rain. Thus, the Exalted has said, “And We send the fecundating winds, then cause the rain to descend from the sky, therewith providing you with water (in abundance), though ye are not the guardians of its stores”,³⁷ and “It is Allāh Who sends forth the winds, so that they raise up the clouds, and We drive them to a land that is dead, and revive the earth therewith after its death: even so (will be) the Resurrection!”³⁸ along with a number of other texts.

Among the disciplines is the field of history and reports about past civilizations. In the Qurʾān there are a number of verses about such matters, and so also in the *Sunna*. The Qurʾān, however, has undertaken the narration of these matters in a manner so that most of its reports are about matters that pertain to the unseen of which the Arabs had no knowledge.³⁹ Nevertheless, the subject matter belonged to the category of knowledge that the Arabs claimed to know. Allāh, the Exalted, has said, “This is part of the tidings of the things unseen, which We reveal unto thee (O Messenger) by inspiration: Thou wast not with them when they cast lots with pens (or arrows), as to which of them should be charged with the care of Mary: nor wast thou with them when they disputed (the point)”,⁴⁰ and “Such are some of the stories of the Unseen, which We have revealed unto thee: before this, neither thou nor thy People knew them. So persevere patiently: for the End is for those who are righteous.”⁴¹ In the traditions there is the story of their fathers Ibrāhīm and Ismāʿīl (peace be upon them) when they constructed the House, along with other things that took place.

Among the fields of knowledge are many out of which most, if not all, have been annulled. These are like *ʿiyāfa* (prognostication (by the flight of birds)), *zajar* (prediction through birds), *kihāna* (divination), *khaff al-ramal* (divination through the plotting of dots), casting stones in the sand, and *tayra* (prediction through omens). The *sharīʿa* annulled the false among them and prohibited

them like *kihāna*, *zajar*, *khatt al-ramal*. It permitted some kind of omens, but not for predicting the unseen. The same applies to *kihāna* and *zajar*. Most of these practices profess to reveal the unseen without any evidence. The Prophet (pbuh) came to identify that part of the unseen, which is purely the truth, and that is based upon revelation and inspiration. After his death, he left for the people a fraction of prophethood: true dreams, and a type of inspiration and foresight for the selected few.

Among these is the discipline of *Tibb* (medicine).⁴² The Arabs had some knowledge of it, though not as much as that of the earlier practitioners, but what had been acquired through the experience of an unlettered people. It was not based on natural sciences that had been established by the earlier sages. It was in this form that the *shariʿa* discussed it,⁴³ but in a manner that is comprehensive, clear and concise with a little providing access to much more. Allāh, the Exalted, says, “Eat and drink, but waste not through excess.”⁴⁴

In the traditions, some medicines have been identified for some illnesses, but those that are unlawful have been annulled, like using *khamr* (wine)⁴⁵ for medicinal purposes as well as charms and spells that are not permitted by the *shariʿa*.

Among them is the fascination with the disciplines of rhetoric, indulgence in the various types of eloquence and the practice of the different modes of address. This was one of their greatest pastimes. Then came the Qurʾān with something that they were unable to imitate. The Exalted says, “Say: ‘If the whole of mankind and Jinns were to gather together to produce the like of this Qurʾān, they could not produce the like thereof, even if they backed up each other with help and support.’”⁴⁶

Among them are the parables. Allāh, the Exalted, says, “Verily We have propounded for men, in this Qurʾān every kind of parable.” The only type not available in the Qurʾān is poetry. Allāh negated it and declared the *shariʿa* to be free of it. Allāh, the Exalted, says while narrating something about the unbelievers, “And say: ‘What! Shall we give up our gods for the sake of a poet possessed?’ Nay! He has come with the (very) Truth, and he confirms (the Message of) the messengers (before him)”⁴⁷ – that is, he does not use poetry for it is not the truth. He said, “We have not instructed the (Prophet) in poetry, nor is it meet for him: this is no less than a Message and a Qurʾān making things clear.”⁴⁸ This meaning is elaborated in the words of the Exalted, “And the poets – It is those straying in evil, who follow them – Seest thou not that they wander distracted in every valley? And that they say what they practise not?”⁴⁹

This shows that poetry is not based upon a sound foundation; rather, it is enchantment without result. It is speech that is not affirmed by acts. This is opposed to what the *shariʿa* has brought down, except what Allāh has exempted.

This is a representative sample of what is meant to alert you about what we are concerned with in relation to the disciplines pursued by the unlettered Arabs.

With respect to the observance of ethical values and what relates to them, it was the first thing that was communicated to them. We usually find this in the Meccan *sūrah*s that deal with what was familiar to them and was praiseworthy for them. These are like the words of the Exalted, “Allāh commands justice, the doing of good, and giving to kith and kin, and He forbids all indecent deeds, and evil and rebellion: He instructs you, that ye may receive admonition.”⁵⁰ He also says: “Say: Come, I will rehearse what Allāh hath (really) prohibited you from: join not anything with Him; be good to your parents; kill not your children on a plea of want; We provide sustenance for you and for them; come not nigh to indecent deeds, whether open or secret; take not life, which Allāh hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom.”⁵¹ Here these characteristics are negated. Then there are His words, “Say: Who hath forbidden the beautiful (gifts) of Allāh, which He hath produced for His servants, and the things, clean and pure (which He hath provided), for sustenance? Say: They are, in the life of this world, for those who believe, (and) purely for them on the Day of Judgement. Thus do We explain the Signs in detail for those who know”,⁵² and His words, “Say: The things that my Lord hath indeed forbidden are: Indecent deeds, whether open or secret; sins and trespasses against truth or reason; assigning of partners to Allāh, for which He hath given no authority; and saying things about Allāh of which ye have no knowledge”,⁵³ along with other verses that convey similar meanings.

Nevertheless, matters pertaining to the prohibition of associating partners with Allāh and the denial of the Hereafter were accorded a higher priority, and these were associated with what was the larger purpose. Certain things that they considered to be part of their higher traits and ethical values were annulled. They were declared not to be so or to be considered harms that did not secure interests that they thought should be preserved, as in the words of the Exalted, “O ye who believe! Wine and gambling, (dedication of) stones and (divination by) arrows, are an abomination – of Satan’s handwork: Eschew such (abomination), that ye may prosper.”⁵⁴ Thereafter, the harms were elaborated, especially those in wine and gambling in so far as they generate enmity and hatred as well as prevention from the remembrance of God and prayer. This was greater in terms of harm as compared to the benefit they had conceived. Wine, in their view, gave courage to the cowardly, created generosity in the stingy and spurred the lazy into action. Gambling too was praiseworthy in their view in so far as they intended the feeding of the poor and needy through it along with compassion for the destitute. Allāh, the Exalted, said, “They ask thee concerning wine and gambling. Say: ‘In them is great sin, and some profit, for men; but the sin is greater than the profit.’”⁵⁵

The *shariʿa* as a whole creates moral values. It is for this reason that the Prophet (pbuh) said, “I have been sent to perfect your moral norms.”⁵⁶

Moral norms, however, are of two types:

The first type: these are those that are customary and are closer to reason and acceptance. It was these that they were urged to adopt in the early days of Islam. Once they were fully entrenched in these, the remaining were perfected for them, and these were:

The second type: these were norms whose meanings could not be rationalized in the first encounter; therefore, they were delayed. Thus, among the last were the prohibition of *ribā* and things resembling it. All these refer to moral norms that they were accustomed⁵⁷ to as a whole.

Do you not see that the Arabs did have some legal rules even during the Jāhiliyya, and these were affirmed by Islam. This is the case with *qirāḍ* (partnership), fixation of blood-money, its imposition on the *ʿāqila* (tribal group), assigning of paternity through physiognomy, station at ʿArafa, rules for eunuchs, assigning of two shares to the male in inheritance, *qasāma* (collective oath), as well as other things that the jurists have mentioned.

We say thereafter: The *shariʿa* did not rest at this. It pointed out to them the evidences of the unity of God from things that were known to them: in the sky, the land, the mountains, clouds and vegetation. It communicated to them the evidences of the last day and prophethood in the same manner. In so far as some part of the laws of the prophets coming down from their father Abraham stayed with them, it addressed them from this perspective indicating that what Muḥammad (pbuh) had brought with him were exactly these laws, as is stated in the words of the Exalted, “It is the religion of your father Abraham. It is He Who has named you Muslims, both before and in this (revelation); that the Messenger may be a witness for you, and ye be witnesses for mankind!”⁵⁸ and “Abraham was not a Jew nor yet a Christian; but he was true in Faith, and bowed his will to Allāh’s (which is Islam), and he joined not gods with Allāh.”⁵⁹ They had, however, a greater part of them, adding to them, and they disagreed about them. The strengthening of these laws came from Muḥammad (pbuh).

They were informed about the blessings that Allāh had granted to them as these were before them. Further, they were informed about the blessings in heaven and their various kinds in terms that were known to them from among the blessings of this world, but free from the impurities and calamities that accompanied the worldly blessings, as in the words of the Exalted, “The companions of the right hand – what will be the companions of the right hand? (They will be) among lote trees without thorns, among tall trees with flowers (or fruits) piled one above another – in shade long-extended, by water flowing constantly, and fruit in abundance, whose season is not limited, nor (supply) forbidden.”⁶⁰ Among the food of the heavens, it was elaborated to them, were things already known to them, like water, milk, wine, honey, dates, grapes,

and all those fruits that were known. Things like walnuts, almonds, apples, melons and other fruits found in non-Arab lands were not mentioned, but were referred to by the general term fruit.

Allāh, the Exalted, said, “Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His path, and who receive guidance.”⁶¹ The Qurʾān, in its entirety, is wisdom. They were aware of wisdom, and there were wise men among them. Wisdom was brought to them, and they were unable to refute it. Among them were orators and sages, like Kuss ibn Sāʿida and others, but he (pbuh) did not debate with them except in the manner of debate to which they were accustomed. Anyone who ponders over the Qurʾān and over the literature of the Arabs about these three⁶² matters will find the facts to be so, except in things that have the exclusive and known attributes of the speech of Allāh. One who goes through all the affairs of the Arabs in this way will find the facts to be as affirmed.

If all this is established, it becomes evident that the *shariʿa* of the unlettered did not exclude what the Arabs were accustomed to.

The Fourth Issue: Basic Assumptions

The fact that the *shariʿa* is for the unlettered establishes that it must be in accordance with the practices of those who profess it, and these are the Arabs. This leads to a number of fundamental assumptions.

Sub-Issue: Attributing Knowledge of the Sciences to the Qurʾān

Among these is the assumption that many people crossed the limits in defining the scope of the Qurʾān. Thus, they attributed to it all kinds of sciences that the earlier and later thinkers had mentioned. Accordingly, they attributed to it the natural sciences, the exact rational sciences, logic, language and all that has been the subject of examination of thinkers in these disciplines as well as others. If this approach is judged against what has preceded, it does not appear to be valid. The worthy ancestors from among the Companions, the Followers and those who came after them (God be pleased with them all) were the people who knew the Qurʾān and its disciplines best. No report has reached us showing that any of them spoke about any of these things and such claims. All that they said was what has preceded, what is established about the rules of obligations and the rules for the Hereafter along with the matters associated with them. Had they been occupied with the examination of such claims, reports would certainly have reached us to guide us on the basis of the issue. This did not happen; therefore, it indicates that the issue did not exist for them. It amounts to an evidence that the Qurʾān did not intend the establishing of any of the things that they conjectured. It is true that it did include things that are of the same nature as

were in the knowledge of the Arabs or things they were accustomed to and which are a matter of amazement for those with knowledge, being things that even the sharpest intelligence cannot grasp without guidance about their signs illuminating pointers. As for things being in it that are actually not there, the answer is: No.⁶³

Perhaps, they reasoned on the basis of the words of the Exalted, “We have sent down to thee the Book explaining all things”,⁶⁴ and “Nothing have We omitted from the Book.”⁶⁵ Then there are the opening letters of some *sūrahs* whose meaning was completely unknown to the Arabs. They may also seek support from some narrations from ‘Ali (God be pleased with him) and others.⁶⁶

As for the verses, the meaning according to commentators is what relates to matters of obligation and worship. Further, the meaning of the word “Book” in the verse “Nothing have We omitted from the Book”⁶⁷ is the Preserved Tablet (*Lawḥ Mahfūz*). They do not state that the Qurʾān includes all the sciences, whether transmitted or rational.

Commentators have spoken about the initial letters before the *sūrahs* implying that the Arabs were aware of their meaning, like numerology that they had learned from the People of the Book, as has been recorded by historians. In the alternative, these were like the *mutashābihāt* (the obscure words) whose meaning no one knows besides Allāh. As for interpreting them to mean something that was unknown to the Arabs, there is none, and no one from among the ancestors claimed that. There is, thus, no evidence for making claims that they have made. What is related from ‘Ali (God be pleased with him) and others on this issue has not been proved to be authentic.

It is, therefore, improper to attribute to the Qurʾān what it does not imply. Likewise, it is improper to deny what the Qurʾān implies. It is necessary to confine oneself in seeking support for understanding its meanings to all that is attributed to the knowledge of the Arabs exclusively.⁶⁸ It is through the knowledge that is deposited there that one reaches the knowledge of legal rules. One who seeks to understand them with something other than what is to be delivered will be led astray and will be attributing statements to Allāh and His Messenger. Allāh knows best and success lies with Him.⁶⁹

Sub-Issue: Following the Usual Meanings

Among the assumptions is that it is necessary in the understanding of the *shariʿa* to follow what was known to the unlettered people, and these are the Arabs in whose language the Qurʾān was revealed. If there was a continuous usage (*ʿurf*) in the language of the Arabs, it is not valid to deviate from such meaning in the understanding of the *shariʿa*. If there was no such usage, it is not valid to apply meanings for its understanding that were not known to the Arabs.

This applies to meanings, words and modes of expression. An example of this is that it was customary with the Arabs not to be subservient to the literal form of words in the preservation of meanings, even though this was observed as well. No single rule of the two was binding for them. They used to construct the meaning according to one at times and according to the other at other times. This did not affect the validity and soundness of their statements.

There are a number of evidences for this:

First: moving away, in many of their statements and speech, from the continuously applied norms, rules and regulations, and applying poetical forms in much of their prose, even though there was no special need, but giving up one form was for something better than it. This is not deemed deficient in their speech, nor a deteriorating factor; rather, it is extensive and strong, even though the other type of speech is more than this.

Second: one of its features is being satisfied with the use of synonyms and similar words instead of the required word. This is not deemed a matter of conflict or of disturbance as long as the intended meaning is sound. The fact that the Qurʾān was revealed in seven readings is satisfying and sufficient for the purpose. The same can be found in abundance in traditions and even in the speech of the ancestors who were aware of the meanings in the Qurʾān. The reciters of the Qurʾān continued to recite in these readings acting on reports that appeared sound to them and conformed to the *muṣḥaf* (the Qurʾān in its covers). They were reciting the Qurʾān in this way without any kind of doubt or difficulty, even though there may be, at first glance, a difference in meaning, but the meaning from its start to the end is sound, there being no excess in it according to the intent of the communication. This is like the words *Mālik*⁷⁰ and *Malik*;⁷¹ *yakhdaʿūna*⁷² and *yukhādiʿūna*;⁷³ and *lanubawwīyannahum*⁷⁴ and *lanubawwiyannahum*.⁷⁵ There are other examples too. All this does not create a discrepancy in meaning from the perspective of understanding the communication. It was a practice with the Arabs to do so.

Do you not see what Ibn Jinni has narrated from ʿIsā ibn ʿUmar, and which is related from others too. He said, “I heard Dhū al-Rumma singing: ‘Help her with thin dry sticks and seek help from the breeze, but let your hands act as a veil between you and her.’” So I said to him, “But you sang *min bāʿs*.” He replied, “*Yābis* and *bāʿis* are the same.” You can see that Dhū al-Rumma did not concern himself with the difference between being wretched (through hunger) and being dry, because the meaning of the verse is sound according to both interpretations and correct with both methods. In the narration of Abū al-ʿAbbās of *al-Aḥwāl*, “*Buʿs* and *yubs* have the same meaning” – that is, in terms of the intended meaning and not in terms of the literal meaning.

It is related from Aḥmad ibn Yaḥyā, who said, “Ibn al-Aʿrābī recited a verse (poetry) for me: ‘The place⁷⁶ is narrow and I do not wish to spend my night here, but I have come to like it due to my fright.’” An aged man from among his companions said to him, “This is not how we recite it, we say

mawḍiʿu ḍīq.” He replied, “Glory be to God, you have been with us for so long and you do not know that they are the same.”

Their poetry has been transmitted through different narrations and with varying words. Taken together it indicates that they did not consider themselves bound by one specific word so that its synonyms or approximations would be considered a defect or weakness, except in specific cases where another word would convey a different meaning. Nevertheless, their usual practice was as has been described.

Third: at times some of the rules for a word are ignored, even though they are taken into account as a whole. This is like their dislike for using a pronoun and conjunction together. Further, they sometimes did not distinguish between what had a form and what did not have a form. Thus, *qumtu wa-zayd* was disapproved of, just like *qāma wa-zayd*. They also combined the forms *ʿumūd* and *yaʿūd* without any dislike, with the *waw* stretched in *ʿumūd* conveying a stronger meaning. Again, they mixed up *saʿīd* with *ʿumūd* despite the difference in form. Cases similar to this are among the finer points of rational measures, but they are ignored and turned away from. This is due to nothing more but lack of depth in refining the language.

Fourth: Arabic language that is praised by the experts of language is one that is free of artificiality and affectation. Thus, if a poet becomes involved in the purification the experts differ in following him. Al-Aṣmaʿī used to criticize al-Ḥuṭayʿa and explained by saying, “I found all his verses to be good, but it became evident to me that he used to indulge in artificiality. A natural poet is not like this; a natural poet is one who is spontaneous in his verse, both good and bad.” What he has said is a category of poetry that is to be followed and something to be excited about according to the experts of language. On the whole, the evidences for this idea are many, and one who pursues Arab poetry will come to know this for certain.

If this is the case, then it is not proper for one discussing the Book of Allāh or the *Sunna* of His Messenger to yield to affectation in their study beyond what is permitted by the Arabic language. His task is to be concerned with the language to the extent that the Arabs were concerned with it, and he should stop at the limits laid down by them.

Sub-Issue: Adopting the Understanding of the Majority

Among them is the assumption that what is valid in the method of comprehension and understanding (of the texts) is the meaning that is common for all the Arabs. Exaggerated implications beyond what can be derived from words and their meanings are not to be adopted. The people in their understanding and in bringing about obligations arising from them are not at the same level or even close, except that they come close in matters to be followed by the majority or whatever is similar. It is in the same way that their interests in this world are

understood. They do not think deeply about their speech or about their acts except to the extent that their interests are to be secured. The exception is where special matters are intended for specific people, like penetrating allusions and far-fetched meanings that remain concealed for the majority. They do not remain concealed from the one for whom they are intended, otherwise it would be something not known to him.

In the same manner, it is binding that the Qurʾān and the *Sunna* be understood – that is, in meanings that are common to all Arabs. It is for this reason that the Qurʾān was revealed in seven readings. These were common for the different dialects so that the Arab tribes could understand it.

Further, the object of the Qurʾān in imposing obligations does not deviate from this method, because the weak is not like the strong, the young is not like the old, the female is not like the male; rather there is a defined role for all towards which the statements are directed. The jurists, therefore, adopted what was common for the majority with respect to their ability to perform. They made this method binding on themselves through an established argument and good counsel. If Allāh had wished He could have made those acts binding that were impossible for them to perform without providing an argument, without giving any proof and even without any warning or sermon. He could have burdened them to understand what cannot be understood and to learn what cannot be learned. There was no restriction on Him in this, for the argument of the King prevails: “Say: With Allāh is the argument that reaches home.”⁷⁷

Allāh, the Glorious, however, addressed them through what they already knew, He imposed obligations on them that were within their ability to perform. He fed them enough during this time to keep them on the straight path, to strengthen their weak and to revitalize their determination. He did this through warnings at times and through threats at other times, through gentle advice at times and through recalling the practices of past civilizations at other times. He employed other methods too that had the same meaning until such time that they understood that they were not different from past creations in this regard; rather, they shared the objective with them, and shared it to the extent that they had the strength to bear it. He granted them greater exemptions as compared to the early nations, and gave them greater blessings and gifts. Allāh is the Knowing, Wise.

It is recorded by al-Tirmidhī as a sound tradition from Ubayy ibn Kaʿb, who said, “The Messenger of Allāh (pbuh) met Jibril (Gabriel) and said, ‘O Jibril, I have been sent to an *umma* that is unlettered. Among them are old and young, boys and girls, and men, but not one has read a book ever.’ He replied, ‘O Muḥammad, the Qurʾān without doubt has been revealed in seven dialects.’”⁷⁸

The conclusion is that it is obligatory at this stage to apply our understanding to the *shariʿa* according to the common standard of the majority, which facilitates things for the unlettered as well as for others.

Sub-Issue: The Intended Meanings

Among the assumptions is that understanding the meanings spread all over the divine communication is the greatest objective. This is based upon the fact that the Arabs showed great concern for meanings for which purpose they kept on refining words. This rule is well known to the experts of Arabic. The word is the means to attain the intended meaning, while the meaning is the objective. It is not the meaning of the individual word alone, because the individual meaning is given up when the contextual meaning is understood without it. This is like Dhū al-Rumma giving up the distinction between *bāʾis* and *yābis* relying on the fact that the required meaning was understood.

A case of greater clarity than this is the report of Ismāʿīlī that is based upon the *Ṣaḥīḥ* of al-Bukhārī. Anas ibn Mālik said, “‘Umar ibn al-Khaṭṭāb (God be pleased with him) recited ‘And fruits and *abban* (fodder),’⁷⁹ and then asked, ‘What is this *abb*?’ He then said, ‘We have not been placed under an obligation to dig out exaggerated meanings.’”⁸⁰ In the same report it is stated from Anas that a man asked ‘Umar ibn al-Khaṭṭāb (God be pleased with him) about his view “What is this *abb*?” to which ‘Umar (God be pleased with him) replied, “We have been prohibited from too much curiosity and exaggeration.”⁸¹ Among these is also the report about Ṣabīgh, whom ‘Umar (God be pleased with him) disciplined for asking too many questions about *mursalāt* and *ʿaṣīfāt*.⁸²

The apparent meaning in all this is that he was prohibited from excessive probing (for unusual meanings), because the contextual meaning is already known as a whole. Further, no rule of obligation rests upon the understanding of these unusual meanings. Thus, he considered “being occupied with the unusual to the neglect of other important things” as exaggerated probing. There is a valid principle for this in the *sharīʿa* that is laid down in the words of the Exalted: “It is not righteousness that ye turn your faces towards East or West; but it is righteousness to believe in Allāh and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and give *zakāt* (regular charity); to fulfil the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the Godfearing.”⁸³

If the understanding of the contextual meaning had depended upon the individual meaning, it would not have amounted to affectation; rather, he would have been under a compulsion to discover it. It is reported from ‘Umar (God be pleased with him) himself about the words of the Exalted, “Or that He may not call them to account by a process of slow wastage (*takhawwuf*)”⁸⁴ when he asked the people about it while at the pulpit. A man from Hudhayl said, “*Takhawwuf* in our language means ‘reducing gradually.’” He then recited the hemistich that meant: “The thickness of its hump is gradually

thinned out by the saddle, just as the bow-wood is gradually straightened by the bow-maker.” ‘Umar said, “O people, hold fast to the compilations of poetry of your Jāhiliyya (days of ignorance) for they contain the interpretations of your Book.”⁸⁵ There is no conflict in the two reports as in this case the meaning of the verse depended upon the individual meaning.

If this is the case, then concern for the meaning of the divine communication is binding, because that is the intended goal and objective. The meaning of the communication in the first instance is based upon such understanding, but it often happens that this care is not undertaken with respect to the Book and the *Sunna*. The seeker gets involved in isolated meanings in a manner that is not required. The meanings become vague for the seeker and become oblivious for one who does not appreciate the modes of thought of the Arabs. His work becomes directed to things that do not require it and his progress strays away from the right path. May Allāh, out of His mercy, protect us.

Sub-Issue: Legal Obligations Are Meaningful to the Masses

Another assumption is that obligations pertaining to tenets of faith and conduct⁸⁶ should be such that they are meaningful for the unlettered person so that it becomes easy for him stay within the fold of the *aḥkām*.

As for the tenets of faith, these should be such that they are meaningful and easy on the mind so that the masses can participate in them even if some possess sharpness of intellect, while others have lesser intelligence. If they were such that only selected people could understand them, the *sharī‘a* would not be one for the masses, nor would it be for the unlettered, but such features have already been established for it. It is, therefore, essential that concepts which need to be understood and in which faith is to be embedded can be easily accessed.

Further, if it were not so, it would necessarily give rise to an obligation for the masses that amounts to performing the impossible, which is not the case as has been mentioned in the discipline of the *uṣūl*. It can, therefore, be seen that the *sharī‘a* identified only those theological matters that could be easily understood, while it moved back others. It identified them through the implications of names and attributes encouraging reflection about created things and what is similar. It deflected the ambiguous things towards the general rule stated in the words of the Exalted, “There is nothing whatever like unto Him”, and after this He left other things, which are difficult to comprehend, unexpressed. It is true that it does not deny the seeking of extra knowledge as a whole, but it keeps the ability of the subject in view.

Among those things that indicate this rule is also the fact that it has not been communicated to us that the Companions (God be pleased with them) became absorbed in such theological matters to the extent that they would become principles for researchers and subjects. Likewise, this has not come

down to us from the Master of the *shari'ah* (pbuh). This also applies to the Followers, who also observed the same rules like the Companions (God be pleased with them). In fact, what has come down to us from the Prophet (pbuh) and his Companions (God be pleased with them) is prohibition from being engrossed in theological matters. He went so far as to say, "People continue questioning each other until they come to ask, 'If Allāh is the creator of all things, who created Allāh?'"⁸⁷

The prohibition of raising too many questions has also been recorded,⁸⁸ as well as exaggeration in what does not concern the masses with respect to their belief and conduct. Mālik has reported that the ancestors used not to approve discussions about things that did not pertain to conduct. What is intended here is things that are difficult to understand and about which silence has been maintained, or these are those rare ambiguous terms in the revealed verses.

Accordingly, probing and looking for things in which the understanding of the masses cannot participate is like deviating from the requirements of the unlettered *shari'ah*. Someone who seeks for what is not to be sought, is likely to become defiant and to fall into depths of darkness from which there is no release. As someone has said, "In minds there are forces with no bounds; if you cross them great commotions can arise." It is due to the craving that people have for things for which there is no obligation that many or most sects have arisen.

As for conduct, the consideration of being unlettered requires that their major obligations and regulations governing matters be expressed in such a manner that the masses can understand them. It is like their understanding of the timings of prayers through their visible signs – that is, the shadows during the declining of the sun, the rising of the dawn and the sun, and its setting along with dusk. It is the same for fasting, as in the words of the Exalted, "Until the white thread of dawn appear to you distinct from its black thread." In so far as this could be interpreted literally, the words "of dawn" were also revealed.⁸⁹ A tradition says, "When the night approaches from there, the day is about to turn away from there, and the sun sets, the person fasting is to break his fast."⁹⁰ The Prophet (pbuh) also said, "We are the unlettered *umma*. We do not calculate and we do not write that the month is such and such."⁹¹ He added, "Do not commence fasting until you see the new moon and do not end (the month of fasting) until you see it. If there is a cloud cover, complete the thirty days."⁹²

We have not been asked to calculate the movement of the sun as compared to the moon, because this was not a known practice among the Arabs, nor was it a practised discipline due to the intricacies involved in it and the difficulty in learning it. For us, the predominant estimate has been deemed a substitute for certain knowledge as regards the legal rules. The ignorant has an excuse and, therefore, the sin has been removed in his case and his mistake

overlooked. The same applies to other matters in which the masses participate. Thus, it is not proper to move out of the bounds laid down by the *shariʿa*, nor is it demanded to go beyond this objective, for that will amount to the probable sign of going astray and of stepping on slippery ground.

It may be said that this goes against what has been transmitted from them about the depth of analysis in the case of legal rules. Further, it also goes against the extreme care exercised by them in cases of doubt as well as the possibility of hypocrisy and artificiality on the part of the people in matters that are likely to lead to errors. (We will say that) these are matters that are profound according to the masses for the understanding of which guidance is not available except to the selected few, for whom these are grave issues that are beyond the reach of the masses. Had this been so, the scholars would have had no merit as compared to the rest of the people. There were among the Companions, the Followers and even their followers (God be pleased with them all) those who were the elect and those who were the public. The elect among them had an understanding of the *shariʿa* that the public did not have, even though all of them were Arabs and an unlettered *umma*. The generations following them, up to this day, are classified in the same way. How then can we assert that the *shariʿa* is easily accessible to the masses? In addition to this, the *shariʿa* included things that could be identified by the Arab public, things that were known to the elect scholars, and others that are known only to God: these being the ambiguities (*mutashābihāt*). Thus, it included things that were accessible in the absolute sense, those that were not accessible in the absolute sense, and things that were known to some, but not to others. Where then is the knowledge that is known exclusively to the majority of the people?

In response we say: the obscure terms (*mutashābihāt*) are not what we are dealing with here, because they are either theological matters the path of whose understanding has not been revealed by the Lawgiver besides acceptance and submission to the revealed verse, or they are governed by the fundamental principles of the *shariʿa* whose rules clash, and this amounts to a particular that has been structured upon a general meaning, which is what we are concerned with. All the objections raised can be answered from different perspectives:

First: these are additional matters that are not imposed in the first instance due to the arguments that have been suggested earlier. They are matters that are presented to one who has practised the details of the *shariʿa* and has pondered over the rules of obligation. Such a person can be distinguished from the majority due to his additional knowledge. He pursues it to such an extent that he loses the attribute of being unlettered. His penetration into important matters is far in excess of one who has not reached his level. His position with respect to what he knows is similar to the ordinary person with respect to what he knows. As long as this relationship is maintained, there is no conflict between what has preceded and what is stated in the objections.

Second: Allāh, the Exalted, has placed those who follow the *shariʿa* at levels that are not to be judged with the same standard. He has raised some above others, just as they are like this in this world. Thus, one who has additional knowledge of the *shariʿa* is not like one who has not acquired this additional knowledge, but all are traversing a common path.

Exclusive knowledge of the *shariʿa* is a gift from Allāh due to which those who are granted this knowledge do not go beyond the general rule of common participation; rather, they fall under it along with the rest. They do distinguish themselves due to the excess granted to them in this common participation, but when they are so distinguished they do not move out of this common participation. Thus, the basis for such a distinction is the common participation.

It is like our saying that piety is required from each person as a whole. Despite this, there are things that are among the prominent, like piety in the case of what is evidently unlawful and evidently disapproved of. Among these are things that are not among prominent matters according to some, but they are so according to others. Thus, those who consider them to be among the prominent fall under the first category as a whole, even though they stand out in their piety from those who do not consider them prominent and in the first category. This is based upon the testimony that a certain case is emphatic in its elaboration or is not so due to its complexity. The same is the case with all the remaining issues due to which the elect are distinguished from the ordinary persons; they do not fall outside the ambit of this rule. It therefore becomes obvious that they are subject to the same common participation that is meant for the majority as a whole.

Third: in those things in which there is a difference, you will find that mostly these are such unqualified matters in the *shariʿa* for which no limit has been prescribed where one can stop. These have been left to the discretion of the subject. Each person, therefore, has been required to comprehend it (in his own way). If a person understands it to have a lower standard, then that is what is required from him, and one who conceives it to be of a higher standard has to meet that requirement. Perhaps the difference in such matters depends upon the ability of the subject, or its lack, to carry it out. If a person is not able to carry it out at a certain level, then he is not commanded to do so; rather, he has to meet a lower standard. A person who can carry it out is commanded to do so. It is in this manner that those matters that seem to oppose what has preceded have to be considered. Allāh knows best.

It is exactly in this sense that all matters pertaining to conduct have been prescribed – that is, they do not push the subject into a hardship by which he is overwhelmed, or they do not suspend the various practices of the subject on which his welfare depends and through which the acquisition of his livelihood is facilitated. Thus, an unlettered person who has not acted upon any of the directives of the *shariʿa* or on rational (moral) requirements, will feel some

pressure if he is asked to move out of his normal practice as compared to one who is already accustomed to such things. It is for this reason that the Qurʾān was revealed in instalments over a period of twenty years with the obligation creating rules coming gradually and not all at once. This was done so that he should not feel reluctant to comply all at once.

It is related from ʿUmar ibn ʿAbd al-ʿAzīz that his son ʿAbd al-Malik said to him, “Why is it that you do not implement the rules (of the *shariʿa*)? By Allāh, it will not bother me if in matters of truth the pots begin to boil between you and me.” ʿUmar said to him, “My son, do not be in such haste. Allāh condemned *khamr* (wine) twice in the Qurʾān, and then prohibited it the third time. I am afraid of imposing the truth on the people all at once for they will reject it all at once, and this will lead to a trial (*fitna*).”⁹³

This concept is sound and acknowledged through common induction. What is applied for the welfare of the people on the assumption of being accustomed to it is better. As it is based upon actual facts, it will sink into the minds of the people when it is in accordance with facts. If the laws are revealed one by one and in parts, it will be closer to the rule of familiarity (*taʿnīs*). The reason is that when a law is implemented the one before it would have become more like a habit. The subject who abstains from the obligation and does not wish to have knowledge of it will also have become familiar with it. When the second law comes down, he will be inclined towards obedience and so also when the third and fourth are prescribed.

It is in this fashion that they first became familiar with the fact that this community was the community of Ibrāhīm (pbuh), just like a child is made familiar with the fact that a certain act is the act of his father. Allāh, the Exalted, says: “It is the religion of your father Abraham”,⁹⁴ “So We revealed to thee, ‘Follow the ways of Abraham the True in Faith, and he joined not gods with Allāh’”,⁹⁵ and “Without doubt, among men, the nearest of kin to Abraham are those who follow him.”⁹⁶ There are other verses too. Had the Qurʾān been revealed all at once, the obligation would have become burdensome on the subject, and he would not be inclined to follow even one or two rules.

A tradition says, “The real blessing is one that becomes a habit.”⁹⁷ When a person becomes accustomed to the performance of a good act, his heart is illuminated through it, and his breast opens up so that he is ready to accept the next rule even before it is pronounced. This is the practice of Allāh in the case of those who are obedient. Another practice that is current among the people is that a person is ready to comply with a command to act when it is similar to an act that is already being performed. It is for this reason that the Prophet (pbuh) used to disapprove of opposing acts and used to prefer what was compatible. Thus, he used to prefer compassion and disapproved of harshness.⁹⁸ He used to prohibit exaggeration and affectation, and performance of that which came close to doing the impossible. The reason is that what he preferred became very easy to comply with and facilitated what had to be legislated for the majority.

The Fifth Issue: The Implied Meanings in the Texts

When it is established that speech with respect to its implied meanings is viewed from two perspectives – from the perspective of its implication of the original meaning, and from the perspective of its implication of a subsidiary meaning that serves the original meaning – it becomes obligatory to examine the interpretation through which the rules are derived, whether it is specific to one perspective or covers both perspectives.

As for the original or primary meaning, there is no difficulty about the validity of considering its implication for the *ahkām* (legal rules) in the absolute sense. It does not admit of disagreement under any circumstances. Examples are forms of commands and prohibitions, general and particular implications, and their like, when these are used without additional circumstances that move the interpretation away from the original meaning.

As for the subsidiary or secondary meaning, the issue is whether considering its implication for the rules is valid in so far as additional meanings are understood from it over and above the original meaning. This is a point of vacillation and each side has its own point of view.

Those who deem it valid argue on the basis of the following arguments:

First: this category is either considered due to its implication for whatever it indicates, or it is not to be considered. It is not possible not to consider it, because it has indicated this meaning; therefore, it is necessary to consider it. It is a meaning that is in addition to the original meaning, otherwise it would not be valid (independently). As far as this meaning indicates a legal rule, it is not possible to ignore it or eliminate it, just as it is not possible to do so for the original meaning. Consequently, it is considered and is desired.

Second: reasoning within the *sharīʿa* to derive the rules is from the perspective that it is in the Arabic language, not that it is in speech alone. This consideration includes the implications in the first original meaning as well as those in the second subsidiary meaning. In such a case, if we say that the second taken with the first is like an attribute of a subject, or an instance or trait, then there is no harm in saying this. Accordingly, considering the first exclusively for the indication of rules without the second is a restriction without reason, and preference without justification; all this is null and void. The first, therefore, has no priority for the indication of the rules as compared to the second. Considering them together is, thus, pre-ascertained.

Third: the jurists have considered and reasoned on the basis of the second for deriving the rules in a large number of cases. For example, they reasoned for the maximum period of menstruation of fifteen days through the words of the Prophet (pbuh), “Each one of you spends half her time not praying.”⁹⁹ The purpose here was to show some kind of deficiency in religion and not the maximum period,¹⁰⁰ but the implication required that this be mentioned even though this is conceived as the presentation of an excess.

Al-Shāfiʿī (God bless him) argues that a very small amount of impurity that normally does not alter the nature of water causes impurity in a very small amount of water on the basis of the words of the Prophet (pbuh): “When one of you wakes up from sleep he is not to insert his hand in the water utensil until he washes it.”¹⁰¹ He said: Had a small impurity not led to impurity of water, its mere suspicion would not have led to the recommendation (of washing). This point was not intended to give a ruling about the state of a small amount of water, but it necessarily follows from what was intended in the words.

It is also seen in the reasoning of their determination of the minimum period of gestation as six months on the basis of the words of the Exalted, “The carrying of the (child) to his weaning is (a period of) thirty months”,¹⁰² read along with His words, “and his weaning was in two years.”¹⁰³ The purpose in the first verse was to indicate the period of both things without giving details. In the second, the period of weaning was stated precisely although silence was intentionally maintained about the period of gestation. Thus, the minimum period of gestation was not stated, but it necessarily followed that the minimum is six months.

The jurists said about the verse “So now associate with them (wives) and seek what Allāh hath ordained for you, and eat and drink, until the white thread of dawn appear to you distinct from its black thread”,¹⁰⁴ that it indicates the permissibility of arising in a state of major impurity along with the validity of the fast, because the permissibility of cohabitation until the rising of the dawn implies this, even though that is not the main purpose of the verse. The intended meaning is to indicate the permissibility of eating, drinking and cohabitation.

They argued on the basis of the words of the Exalted, “And they say: ‘The Most Compassionate has taken a son!’ Glory to Him! They are (but) servants raised to honour”, as well as other verses that a son cannot be owned. The purpose¹⁰⁵ of establishing the attribute of servitude to someone other than Allāh – especially in the case of angels – is the denial of taking a son, not that a son cannot be owned; but it followed necessarily from the denial of sonship that what can be attributed towards it is nothing other than servitude, because no one else exists¹⁰⁶ besides the Lord and His servant.

They argued for establishing the liability of *zakāt* in smaller and larger quantity of grains through the words of the Prophet (pbuh), “In what is fed by rainwater is *ushr* (ten per cent tithe)”,¹⁰⁷ although the purpose¹⁰⁸ was the determination of the percentage to be paid, not the item on which it is to be paid. Like this are all general meanings that are redirected towards the cause,¹⁰⁹ because in most cases the general meaning is considered, taking into account the words and intention, even though the cause is specific.

They argued for the invalidity of sale at the time of the call for (Friday) prayers on the basis of the words of the Exalted, “O ye who believe! When the

call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allāh, and leave off business (and traffic)",¹¹⁰ whereas the main purpose of the verse is that of hastening earnestly and not the elaboration of the invalidity of sale.¹¹¹

They established *qiyās jalī* (manifest analogy)¹¹² as an analogy for linking the slave woman with the male slave in the impact of emancipation, even though the main purpose of the words of the Prophet (pbuh), "One who emancipates his share in a slave", is absolute ownership, not the specifying of the male.

There are many other such cases that cannot be enumerated due to their excessive numbers. In all these cases, the secondary (subsidiary) meaning has been taken into account and not the first. If this is the case, it is established that reasoning on this basis is valid and can be accepted.

Those who do not deem it valid argue on the basis of the following:

First: this form of meaning is by assumption subservient to the primary meaning and subsidiary to it. The meaning that it indicates is, therefore, to emphasize the primary meaning, to strengthen it and to elaborate it. It is the meaning that is accepted when it is heard and is understood. This is like our expressing an upcoming matter in terms of threat and reprimand, as in the words of the Exalted, "Do what ye will: verily He seeth (clearly) all that ye do",¹¹³ and His words, "Taste thou (this)! Truly wast thou mighty, full of honour!"¹¹⁴ In such cases the main purpose is not a command;¹¹⁵ rather, it is the communication of a threat or contempt. It is not, therefore, acceptable to derive rules from them that amount to legal rules, and it is not valid if they are derived. It is like our saying, "Ask at the town where we have been."¹¹⁶ The purpose here is "ask the people of the township", but the township is deemed the one that will respond¹¹⁷ to the question as a mode of expression. Thus, no rule can be based upon the township being made responsible for the answer. Likewise, in the words of the Exalted, "They will dwell therein so long as the heavens and the earth endure",¹¹⁸ The meaning that can be understood is that both the heavens and earth will be destroyed¹¹⁹ and will not endure, but the main purpose is to report that endurance means that torment for the unbelievers will not come to an end. There are other examples like this that are countless. If this is the case, then the additional fact is mentioned for elaboration, emphasis or strengthening of the primary meaning, and there is no other implication. Thus, there is no specific rule, which amounts to an addition, that can be derived from it.

Second: if it had a specific legal rule that it conveyed independent of the primary meaning, then this would be the primary meaning,¹²⁰ because the determination of this meaning would be the primary intention. In such a case, the syntax would consider it the primary and not the secondary meaning. We have, however, assumed that it is the secondary meaning. This is a substitution that is not possible.

It is not to be said that its consequential implication does not negate the fact that it is the intended implication. To draw an analogy, we say for the purposes of the *shariʿa* that there are primary purposes and secondary purposes, and all are intended by the Lawgiver; therefore, the intention of the subject directed towards the secondary purposes, while neglecting the primary purposes, is valid; thus, we can construct the rules of obligation on this basis, as will be coming up, God willing. Consequently, we say here that the secondary implication does not prevent the intention of the subject for understanding the rules from it, because the method through which the *shariʿa* is understood here is the same as that for understanding the purposes in practice. If the methods conform, making a distinction between them is not proper. By considering one as valid, it becomes binding to consider the other as valid, just like the ignoring one leads to ignoring the other.

We will respond by saying that if this is conceded, it amounts to the most persuasive argument for what has preceded. For example, if the intention to enter into a contract of marriage is the satisfaction of lust, then it is valid in so far as it supports the primary intention, which is the preservation of progeny. Thus, lack of knowledge on the part of the subject that this supports the primary purpose does not hinder the primary intention of the Lawgiver.

We say the same in our issue: the secondary meaning in the Arabic language with respect to intention supports the primary meaning for the very implication of the primary meaning. Thus, what it implies (indirectly) is the primary meaning. The secondary meaning, therefore, reverts to the primary meaning. This makes it binding that the secondary meaning should not create an excess over the primary meaning, and that is what is required.

Further, there is a distinction between the two issues. The distinction is that marriage for the satisfaction of carnal desire, if it falls under the secondary purposes of the necessities, falls from another perspective under “needs”, because it is referred to the intention of creating ease for the subject in the meeting of his ambitions and the satisfaction of his desires along with the removal of hardship for him. If it falls under the principle of “needs” his independent intention from this perspective is valid. In such a case, it reverts to an intention that is not secondary, as distinguished from our issue. The secondary meaning is not valid through an independent implication of a meaning that does not support the primary meaning, because the Arabic text is structured to convey such an intention. Thus, it is not possible to move out of this structure to another.

Third: the form in which this meaning is laid down, where it is secondary to the primary meaning, requires that the meaning in order to be valid can only be conveyed in this form. If it was permitted to derive the meaning in some other way, it would be a deviation from the manner in which the meaning is applied, and this is not valid. The implication of a meaning that conveys a rule in excess of what is within the primary meaning is a deviation from its

being a secondary meaning; deriving a rule in such a way would differ from the way Arabic is understood, which is not valid. The meaning derived in this way and what has been said about the derivation of the rules through secondary meanings cannot be conceded. In fact, it reverts to one of two things: either to the primary meaning or to a third interpretation other than the second.¹²¹

As for the period of menstruation,¹²² we do not accept that the tradition indicates such a meaning, and there is a disagreement about it. Thus, the Ḥanafis say that the maximum period is ten days. If this is accepted, then this is not derived from the form in which the meaning is laid down in the text. There is a detailed discussion about this.

The issue raised by the Shāfi'is about the impurity of water¹²³ is based on analogy¹²⁴ or some other method. The minimum period of gestation is derived through the primary meaning¹²⁵ and not from the secondary meaning, likewise waking up in a state of major impurity,¹²⁶ because there is no other way in which it can be understood.¹²⁷ As for the conclusion that a child cannot be owned, the reasoning from the verse indicates that this is not possible and there is a disagreement about it. As to what was said about the issue of *zakāt*, those who derive it from the general meaning base it on the fact that it is the general meaning that is intended, but they did not say that it is not intended, otherwise there would be a contradiction. The reason is that the rules of the *shari'ah* are derived from the evidences of the *shari'ah* on the assumption that this is the intention of the Lawgiver. In such a case, how can the reasoning be based on the existence of a general meaning when it is acknowledged that such a meaning is apparently not intended? The same is to be said about the general meaning that is redirected towards the cause without making a distinction. Those who upheld the revocation of sale at the time of the call for prayer based it upon the words of the Exalted, "And leave off business (and traffic)",¹²⁸ and in their view it is the intended not the rejected meaning, otherwise there would result a contradiction in the command, as mentioned. Likewise, the position about manifest analogy, as they included the slave woman in the rule for the male slave due to analogy on the grounds that the male slave was specifically mentioned. The same applies to all similar cases in this category.

The conclusion is that reasoning on the basis of the secondary meaning for the derivation of the rules is not established. Giving it operative effect is not at all valid. Just as a response can be given for the third argument, a response can be given for the first and second as well. In the first is the appropriation of what is required, because it is said about it: If the implied meaning requires a legal rule, it is not possible to ignore it. This is the crux of the disagreement. The second meaning is conceded, but there remains the examination of its independence in implying legal rules, and this is disputed. The correct view, then, is to deny it in the absolute sense. Allāh knows best.

Sub-Issue: Additional Implied Meanings

It has become evident that there is a conflict of evidences on the issue. It has become apparent that the stronger of the two sides is that of those who do not deem the secondary implication valid. The situation enforces the point that the secondary implication, which implies a subsidiary meaning, has no implication whatsoever for additional legal rules.

There remains, however, a perspective that may be conceived to show that it does have an implication for additional meanings over and above the primary meaning. This is part of the good practices of the *sharīʿa* and the sound ethical principles that are affirmed by all reasonable persons; thus, they are recognized in the *sharīʿa*. The secondary meaning, therefore, is not entirely devoid of implication as a whole. Under such circumstances, it becomes difficult to maintain the absolute prevention of such meanings.

The elaboration of this statement is attained through seven illustrations:

First: the Qurʾān has come down with a call from Allāh for the servants, and a call by the servants directed towards Allāh. This is either by way of narratives or instructions. When the call comes from Allāh for the servants it comes in words meant for a call required for the servants that is in the established meaning (of a call), and is not omitted. This can be seen in the words of the Exalted: “O My servants who believe! Truly, spacious is My Earth: therefore serve ye Me – (and Me alone!)”¹²⁹ “Say: ‘O my Servants who have transgressed against their souls! Despair not of the Mercy of Allāh: for Allāh forgives all sins: for He is Oft-Forgiving, Most Merciful’ ”,¹³⁰ “Say: ‘O men! I am sent unto you all, as the Messenger of Allāh’ ”,¹³¹ “O men!”¹³² and “O ye of Faith!”¹³³

When it states the call from the servants directed towards Allāh, it does not employ the word for the call in the established meaning, because the word for a call is originally meant for alerting someone and Allāh is free of such a meaning.

Further, most of the words meant for a call are for someone at a distance. Among these is *yā* (O), which is the major form. Allāh, the Exalted, has informed us that He is close to the one who calls Him, especially in the words of the Exalted, “When My servants ask thee concerning Me, I am indeed close (to them).”¹³⁴ This is so in terms of His presence, “Seest thou not that Allāh doth know (all) that is in the heavens and on earth? There is not a secret consultation between three, but He is the fourth of them – nor between five but He is the sixth – nor between fewer nor more, but He is with them, wheresoever they be”,¹³⁵ and “We are nearer to him than (his) jugular vein.”¹³⁶

From this form of cautioning, we derive two practices: first, the dropping of the word of caution; second, the indication of nearness. Likewise, in the affirmation of the word of caution in another type, the caution conveys two meanings: establishing the caution for one whose habit is forgetfulness, turning away absent mindedness, and this is the servant; and the indication

of the loftiness of one who calls, who is free of the weaknesses of the servants, who in His nearness is Most High, and in His loftiness is near, glory be to Him.

Second: the call made by the servant to His Lord is a call of anxiety and request that his affairs be made right. It is for this reason that the word *al-Rabb* is employed (by the Qurʾān) in most cases by way of caution and instruction, so that the servant in his supplication uses a word that is appropriate for the status of the One called upon. The word *Rabb* in its literal meaning implies One who possesses attributes that mean the nourishing of the one supported. The Exalted says in elaboration of the supplication of the servant, “Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector; Grant us victory over the unbelievers”;¹³⁷ and “Our Lord! Let not our hearts deviate now after Thou hast guided us, but grant us mercy from Thee; for Thou art the Grantor of bounties without measure.”¹³⁸ The words of the Exalted, “Remember how they said: ‘O Allāh! If this is indeed the Truth from Thee’”¹³⁹ have been stated without employing the word *al-Rabb*, because there is no compatibility between the word and what they said; rather, it is one that negates it. This is distinguished from the story of Jesus (pbuh), in His words, “Said Jesus the son of Mary: ‘O Allāh our Lord! Send us from heaven a Table set (with viands), that there may be for us – for the first and the last of us – a solemn festival and a sign from Thee; and provide for our sustenance, for Thou art the best Sustainer (of our needs).”¹⁴⁰ The word *al-Rabb* is indeed most suitable here.

Third: the Qurʾān has employed indirect expressions (allusion) for those things that become embarrassing when expressed in clear terms, like using the term clothing for sexual intercourse and cohabitation, and answering a need for visiting the privy. In the same way it was stated (about Jesus and Mary), “Christ the son of Mary was no more than a messenger; many were the messengers that passed away before him. His mother was a woman of truth. They had both to eat their (daily) food.”¹⁴¹ What we have derived from this is that it was intended that we show respect. This meaning is understood through a secondary implication and not the original implication.

Fourth: it conveys the mode of turning (attention) that arises in the Qurʾān from being oblivious of presence to being aware of presence as far as the servant is concerned when the present state requires that as in the words of the Exalted, “Praise be to Allāh, the cherisher and sustainer of the worlds. Most Compassionate, Most Merciful. Master of the Day of Judgement.”¹⁴² This is followed by the words, “Thee do we worship, and Thine aid we seek.”¹⁴³ This is also reversed, when the present state requires it: “He it is Who enableth you to traverse through land and sea; so that ye even board ships; they sail with them with a favourable wind, and they rejoice thereat; then comes a stormy wind and the waves come to them from all sides, and they

think they are being overwhelmed; they pray unto Allāh, sincerely offering (their) duty unto Him saying, ‘If Thou dost deliver us from this, we shall truly show our gratitude.’”¹⁴⁴

In this respect, ponder over the meaning of the words of the Exalted, “(The Prophet) frowned and turned away, because there came to him the blind man (interrupting)”,¹⁴⁵ in so far as the Prophet (pbuh) was blamed to a certain extent, but in a state of being unaware that makes the statement of blame lighter. The text was then redirected towards communication, which was more lenient in terms of blame. It is for this reason that the passage ends with the words, “For it is indeed a Message of remembrance.”¹⁴⁶

Fifth: there is the practice of not expressly attributing the creation of evil to Allāh, the Exalted, even though He is the creator of everything. It is visible in the words of the Exalted, “Say: ‘O Allāh. Lord of Power (And Rule), Thou givest power to whom Thou pleasest, and Thou strippest away power from whom Thou pleasest: Thou enduest with honour whom Thou pleasest, and Thou bringest low whom Thou pleasest: In Thy hand is all good. Verily, over all things Thou hast power.’”¹⁴⁷ The verse does not say, “In Thy hand is all good and evil”, even though both types are mentioned together, because stripping off power and bringing low amount to obvious evil for the person affected, and it was stated “Over all things Thou hast power” to draw attention to the fact that all things are His creation. This was so until a tradition said, “All good is Your hands, but evil is not attributed to You.”¹⁴⁸

Abraham (pbuh) said: “Who created me, and it is He Who guides me; Who gives me food and drink, and when I am ill, it is He Who cures me. Who will cause me to die, and then to live (again), and Who, I hope, will forgive me my faults on the Day of Judgement.”¹⁴⁹ Thus, he attributed to the Lord of the Worlds creation, guidance, feeding, drinking, cure, death, resurrection and forgiveness for mistakes. He did not mention the harm that occurs during illness, and remained silent not attributing it to Allāh.

Sixth: guidance is provided on the good practice of debating in which sudden rejection on encounter is to be given up in favour of amiability and tolerance, as in the words of the Exalted, “Say: ‘Who gives you sustenance, from the heavens and the earth?’ Say: ‘It is Allāh, and certain it is that either we or ye are on right guidance or in manifest error!’”,¹⁵⁰ “Say: ‘If the Most Compassionate had a son, I would be the first to worship’”,¹⁵¹ “Or do they say, ‘He has forged it?’ Say: ‘If I had forged it, on me were my sin! And I am free of the sins of which ye are guilty!’”,¹⁵² “What! Do they take for intercessors others besides Allāh? Say: ‘Even if they have no power whatever and no intelligence?’”,¹⁵³ and “What! Even though their fathers were void of knowledge and guidance?”¹⁵⁴ The reason is that all this encourages acceptance, the shedding of opposition and the extinguishing the flame of bias.

Seventh: finally, there is the practice of interpreting affairs according to the usual manner of linking things to cause and effect as well as the

comprehension of causes from these,¹⁵⁵ even though knowledge can come from sources that are not dependent on the usual outcomes, as in the words of the Exalted, “Soon will thy Lord raise thee to a station of praise and glory”,¹⁵⁶ “Ah! Perhaps Allāh will give (thee) victory, or a decision according to His will”,¹⁵⁷ and “But it is possible that ye dislike a thing which is good for you.”¹⁵⁸ In this category are also words of the Exalted, “That ye may become righteous”,¹⁵⁹ and “that ye may remember.”¹⁶⁰ There are other verses too.

Hope, compassion and other things in reality are acts of one who does not know the outcome of things. Allāh, on the other hand, is fully aware of what happens and what will happen as well as how it will happen. The affairs, however, were expressed in terms of the usual in our examples. Likewise, it is necessary for one who is aware of the outcome of an affair – due to some form of knowledge that is beyond the usual practices of the majority – that he pass judgement over it when giving it expression with the judgement of the person who is not aware of the outcome. Consequently, he is engulfed by the general public, even though there have appeared in him characteristics by which he stands distinguished from them. This is one of the outstanding merits from among superior practices. The Messenger of Allāh (pbuh) used to have information about many hypocrites, and the Lord conveyed to him most of their secrets, but he used to deal with them in the same way as he did with believers because of their apparent inclusion in the community.

What we are dealing with is from this category, and the examples are numerous. If this is the case, it becomes evident that the secondary meaning does convey *aḥkām sharʿiyya* (legal rules) as well as practical benefits that are not classified under the primary meaning. This weakens the previous view that was preferred.

The response is: These examples and those that are similar do not convey a legal rule due to the form of words and their meaning. The rule is understood from a different perspective and that is the following of acts.¹⁶¹ Allāh knows best.

NOTES

- 1 Qurʾān 12:2.
- 2 Qurʾān 26:195.
- 3 Qurʾān 16:103.
- 4 Qurʾān 44:41.
- 5 This is attributed by al-Āmidī to some of the ancestors and even to later scholars.
- 6 The statements in parenthesis do not convey the exact meanings of the statements in quotation marks or the order in which the words have been used. To do so we will have to use a number of extra words. This proves the point being made by the Learned Author that this mode of expression is exclusive to the Arabic language.
- 7 Qurʾān 19:64.
- 8 The same can be said about this translation or any other translation from Arabic.
- 9 This means that it is meant to be understood by simple people. It does not need profound metaphysical or other concepts for it to be understood. It is a *sharīʿa* that requires action and such action is possible only when its commands and prohibitions are simple and straightforward so that they can be understood by the masses. The learned editor, however, argues that not all the laws of the *sharīʿa* are easily visible to the general public for otherwise why would there be some who are *mujtahids* and others who are *muqallids*? He also states that, as compared to this, performing the obligatory acts does not require knowledge of special disciplines. On the basis of this argument, the learned editor finds it difficult to agree that the fact that the *sharīʿa* is for the unlettered has anything to do with many of the points raised by the Author.
- 10 Qurʾān 62:2.
- 11 Qurʾān 7:158.
- 12 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 194, Tr. No. 2944.
- 13 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 126, Tr. No. 1913.
- 14 The Author uses the word *kitāb* here, which can mean knowledge of an earlier scripture. The interpretation will rest on the meaning of how the following verse is interpreted.
- 15 Qurʾān 29:48.
- 16 Editor: The others besides Arabs had secondary significance, and the secondary is not to be assigned a rule.
- 17 The editor says that this is not an independent argument, but is in reality part of the second argument.
- 18 Qurʾān 41:44.
- 19 Qurʾān 16:103.
- 20 Qurʾān 6:97.
- 21 Qurʾān 16:16.
- 22 Qurʾān 36:39–40.
- 23 Qurʾān 10:5.
- 24 Qurʾān 17:12.
- 25 Qurʾān 67:5.
- 26 Qurʾān 2:189.
- 27 The editor points out that astronomy is a specialized discipline known to only a few. These verses, however, could be understood by the people after a little reflection and observation. There are other details that are known only to sailors and the like and not to everyone. On the whole, it is not necessary that the Qurʾān restrict its description according to the knowledge of the Arabs. No such restriction can be implied for what is in the Qurʾān.
- 28 Qurʾān 13:12–13.
- 29 Qurʾān 56:68–69.
- 30 Qurʾān 78:14.

- 31 Qurʾān 56:82.
- 32 Qurʾān 56:82.
- 33 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 84, Tr. No. 73.
- 34 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 333, Tr. No. 846.
- 35 It is recorded by Mālik, *al-Muwattaʿa*, vol. 1, 192. The tradition is considered weak, as the scholars of traditions do not consider it to possess a sound *isnād* (chain of transmission).
- 36 It is recorded by al-Ṭabarī, *Tafsīr*, vol. 27, 208. It is considered to be a weak report.
- 37 Qurʾān 15:22.
- 38 Qurʾān 35:9.
- 39 The Editor points out, as above, that this confirms that it is not necessary that the Qurʾān describe things that were known to the Arabs, validating some and annulling others, and even adding to some. This would appear to be an exaggeration as all this is in no way necessary for the independent descriptions of the Qurʾān.
- 40 Qurʾān 3:44.
- 41 Qurʾān 11:49.
- 42 The editor quotes Ibn al-Qayyim at length to elaborate the meaning of *Ṭibb* by classifying it into three forms. Thereafter examples are given of exemptions for those suffering from illnesses or physical handicaps.
- 43 One has to be careful about the way in which the Author uses the term *sharīʿa* sometimes. The earlier jurists like al-Ghazālī and others have used the term in a somewhat restricted sense to include the law and the tenets of faith. The Author here is including all kinds of disciplines whether these pertain to the sciences or fortune-telling within its meaning. Matters like divination do have legal rules of prohibition, but it is difficult to see how pure sciences are classified under the term, unless one subscribes to the Islamization of knowledge project.
- 44 Qurʾān 11:49.
- 45 The Author is apparently referring to a tradition recorded by Muslim, *Ṣaḥīḥ*, vol. 3, 1573, Tr. No. 1984. It is to be noted that the Ḥanafī jurists use the term *khamr* strictly for wine derived from grape juice, while the majority extend the term to all intoxicants. The Ḥanafīs prohibit other types of liquor under a different classification. Some Ḥanafī jurists maintain that *khamr* can be used for medicinal purposes when it is mixed with other things and all its characteristics are lost. The majority of the jurists are very strict about the prohibition and do not permit such use under any circumstances.
- 46 Qurʾān 17:88.
- 47 Qurʾān 37:36–37.
- 48 Qurʾān 36:69.
- 49 Qurʾān 26:224–26.
- 50 Qurʾān 16:90.
- 51 Qurʾān 6:151.
- 52 Qurʾān 7:32.
- 53 Qurʾān 7:33.
- 54 Qurʾān 5:90.
- 55 Qurʾān 2:219.
- 56 It is recorded by al-Bukhārī, *al-Tārikh al-Kabīr*, vol. 2, 88; Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, vol. 1, 192; and al-Bayhaqī, *al-Sunan al-Kubrā*, vol. 10, 191–92.
- 57 The learned editor says that if the Arabs had not been acquainted with moral values at all and a Prophet had come to them explaining good and evil to them, then after affirming his message they would not have had a choice in the adoption of these values. This is the case for things in which they were in error like burying the female child, indulging in *ribā*, drinking wine and so on. In fact, their faith in the Book of Allāh and the *Sunna* of His Messenger purified them of these erroneous practices that were part of the Jāhiliyya (age of ignorance). The fact that the *sharīʿa* is for the unlettered has little to do with this discussion, because there is no nation in the world that does not possess some higher values along with evil traits.

- 58 Qurʾān 22:78.
- 59 Qurʾān 3:67.
- 60 Qurʾān 56:27–33.
- 61 Qurʾān 16:125.
- 62 Wisdom, oration and rhetoric. The learned editor states again that the *shariʿa*, being *ummiyya*, in no way means it should have come in a manner that accommodated their traits and practices.
- 63 The learned editor raises the question whether descriptions in the Qurʾān of matters like the blessings of heaven and the torment of hell-fire were things that the Arabs were accustomed to. Was the ascension of the Prophet (pbuh) to the heavens something that the Arabs knew already? The main point, says the editor, is conceded that it is not proper to exaggerate and imply things in the Qurʾān when they are not there and that the main purpose is that the Qurʾān was guidance and legislation, but to cut off its sources of knowledge like this and confine them to what was known to the Arabs or what they were accustomed to is not justified.
- 64 Qurʾān 16:89.
- 65 Qurʾān 6:38.
- 66 The Author will show later that many of these reports are weak.
- 67 Qurʾān 6:38.
- 68 The learned editor says that if he had said the majority of the Arabs it would have been better. According to the opinion of the Author, he adds, it is not proper for us to form an understanding of verses of *sūrahs* like al-Naḥl (the Bee) and about the formation of milk and honey and other wonders of our Lord by referring to the knowledge imparted by sciences dealing with the life of animals with udders and with the life of bees. Likewise, how are we to understand the meaning of words like “In it there is a cure for mankind”, without referring to scientific knowledge and experiments. The fact is that the Book of Allāh is for all mankind, and it reveals its knowledge to each according to his need and ability.
- 69 This is a difficult area and one has to be very careful about what one is saying. The main problem is that, when we start altering the meaning of technical terms that the learned ancestors established centuries ago, problems are going to arise. In the previous note, the learned editor has raised an objection and rightly so that the Author is unnecessarily trying to confine and restrict the use of human reason and knowledge in understanding the meanings in the Qurʾān. This is followed by a statement by the Author that appears plausible and that pertains to the use of reason in deriving legal rules. He is right if he means that we cannot alter the implication of legal rules by adducing evidence of our reason. The truth is, and we have pointed this out earlier, that the Author has used the term *shariʿa* in a meaning that is much wider than the meaning understood by jurists like al-Ghazālī and those before him. The *shariʿa*, in its wider meaning, includes the law and the tenets of faith. In these matters reason has a defined role. In matters of science and facts of life, the Qurʾān itself encourages us to give full play to our intellect in appreciating the wonders of the universe and praise Almighty Allāh for what He has created. In short, the Author should not have given vague meanings to the term *shariʿa*.
- Having said that, we have to be fair to the Author and must try to understand why he might be extending the technical meaning of the *shariʿa* to include everything. He is dealing with the *maqāṣid al-shariʿa*, or the purposes of the *shariʿa*. He calls them the universals and the *uṣūl* of the *shariʿa*. Does it mean the law alone or does it include our spiritual, social, scientific, rational, educational and other endeavours: the complete code of life?
- 70 Qurʾān 1:4.
- 71 Qurʾān 1:4.
- 72 Qurʾān 2:9.
- 73 Qurʾān 2:9.
- 74 Qurʾān 29:58.
- 75 Qurʾān 29:58.

- 76 In one manuscript the word is *zīr* (lion's den). Here *zabn* (tight, narrow) is used.
- 77 Qurʾān 6:149.
- 78 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 194, Tr. No. 2944. It has been recorded by a number of other scholars too.
- 79 Qurʾān 80:31.
- 80 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 264–65. This report has preceded in volume one of this translation.
- 81 Ibid.
- 82 This too has preceded in the first volume. The verse is “By the (winds) that scatter; and those that lift and bear away heavy weights”, Qurʾān 51:1–2.
- 83 Qurʾān 2:177.
- 84 Qurʾān 16:47.
- 85 A number of scholars have denied the existence of this report. It has, however, been recorded by al-Ṭabarī, *Tafsīr*, vol. 14, 113, but it is considered weak. It is also reproduced by al-Qurtubī, *Tafsīr*, vol. 10, 110.
- 86 The tenets of faith and rules of conduct together amount to the *sharīʿa* – that is, here the learned Author is following the traditional meaning of the term *sharīʿa*.
- 87 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 336, Tr. No. 3276; Muslim, *Ṣaḥīḥ*, vol. 1, 119–20, Tr. No. 134.
- 88 It is recorded partly by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 264–65.
- 89 The Author is indicating that the words of the Qurʾān could be taken to mean “when you can distinguish a white thread from a black thread” in the morning light, but when the words “of dawn” (*min al-fajr*) are added, the interpretation becomes clear that it is the white thread of the dawn as distinguished from the black thread.
- 90 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 194, Tr. No. 1954.
- 91 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 126, Tr. No. 1913.
- 92 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 1113, Tr. No. 1900.
- 93 This view is attributed to the towering personality of ʿUmar ibn ʿAbd al-ʿAzīz. On reflection it appears that the matter should be viewed in a somewhat different light. It is true that the laws were revealed in stages so that the people who were steeped in the practices of the Jāhiliyya would come to accept them. It is valid for the Arabs living in Mecca and Medina when the revelation was coming down with the laws for the first time. The same cannot be said about the people living during the time of ʿUmar ibn ʿAbd al-ʿAzīz. The laws had been followed by the people, or had been known to them, for more than a century. How can the rule of gradual application be applied to such people. It sounds like the argument advanced by some people today that we should first meet the needs of people, especially food and basic needs, before we start cutting hands for theft. This is a false argument. Does it mean that the people who have been Muslims for centuries are to be treated like unbelievers who are about to accept Islam? Have they accepted Islam recently? Are they unbelievers? Further, on this argument, the penal codes applied in Muslim countries, and many other laws, should be suspended until such time that all the basic needs of people have been met and a welfare society has been created and put into place.
- 94 Qurʾān 22:178.
- 95 Qurʾān 16:123.
- 96 Qurʾān 3:68.
- 97 It is recorded by Ibn Māja, *Sunan*, vol. 1, 80, Tr. No. 221; Ibn Ḥibbān, *Ṣaḥīḥ*, vol. 2, 8, Tr. No. 310. The full tradition is: “The real blessing is one that becomes a habit, while evil is constant resistance. He for whom Allāh wills His blessings is granted the *fiqh* (understanding) of *dīn*.”
- 98 The Author is pointing to what has been recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 3003, Tr. No. 2593: “Allāh is compassionate and loves compassion ...”

- 99 Most scholars consider this tradition to be weak or refuse to identify it. It does occur in books of *fiqh* however. The learned editor mentions that al-Manāwī has recorded the tradition.
- 100 The editor says that the purpose was to indicate the maximum period of menstruation, which amounts to some kind of deficiency for purposes of religion.
- 101 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 263, Tr. No. 162. The editor points out that the complete tradition also includes the words, “For he does not know where his hand has been during the night.”
- 102 Qurʾān 46:15.
- 103 Qurʾān 31:14.
- 104 Qurʾān 2:187.
- 105 Editor: That is the purpose of the primary meaning the syntax of which has been described earlier. As for not owning, it is the secondary meaning that establishes that he is a servant and not a son. When the fact of being a son is negated, it shows that there is no compatibility between being a servant and a child. Further, a child cannot be owned and cannot be a slave.
- 106 Editor: This is another statement about what is asserted above.
- 107 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 347, Tr. No. 1483. The learned editor points out that in a version from Ibn ʿUmar (God be pleased with them) the words are: “In what is irrigated by rainwater and springs ...”
- 108 The learned editor expresses surprise about this and says there is no reason why both meanings cannot be understood through the primary intention.
- 109 The editor explains that he is actually trying to distinguish between the primary intended meaning and the secondary meaning through which the legal rule is extracted.
- 110 Qurʾān 62:9.
- 111 The editor says he wishes to point out that the implication of its being invalid necessarily follows from the prohibition.
- 112 Editor: It is a sound analogy in which distinctive attributes have been eliminated.
- 113 Qurʾān 41:40.
- 114 Qurʾān 44:49.
- 115 Editor: That is, it is not the primary meaning that is intended. Thus, contempt is a secondary meaning. Rules can be derived from both meanings, but the real intention here is to indicate contempt.
- 116 Qurʾān 12:82.
- 117 Editor: It amounts to strengthening the intended meaning to an extent that no member of the township is exempted from the question.
- 118 Qurʾān 11:107.
- 119 Editor: Some of the scholars have held that this means the visible world and the sky as well as the stars that exist.
- 120 Editor: That is, it would have been the subject of the primary intention.
- 121 Editor: That is, there is moreover no derivation of a rule as in the case of the period of menstruation. It is possible that he is indicating through the third meaning the good practices that will be coming up in the next section.
- 122 In the example mentioned at the beginning of the discussion.
- 123 This too has been discussed earlier. The issue is whether a small impurity that does not make a large amount of water impure may make a small amount of water impure. The other examples that follow have also been discussed earlier.
- 124 Editor: This is not clear. The editor also objects to the manner in which this is attributed to al-Shāfiʿī. The response is that the Author is using the term analogy in a meaning that is not strict; therefore, he adds that it could be some other method.
- 125 Editor: This is not obvious from the words used; it is derived through a process of addition and subtraction.

- 126 The learned editor points out that this is usually called *iqtiḍāʾ al-naṣṣ*, which means implying a missing legal meaning that is required to complete the legal meaning of the text.
- 127 Editor: That is, the meaning of the text becomes comprehensible only in this way.
- 128 Qurʾān 62:9.
- 129 Qurʾān 29:56.
- 130 Qurʾān 39:53.
- 131 Qurʾān 7:158.
- 132 Qurʾān 7:158.
- 133 Qurʾān 2:104.
- 134 Qurʾān 2:186.
- 135 Qurʾān 58:7.
- 136 Qurʾān 50:16.
- 137 Qurʾān 2:286.
- 138 Qurʾān 3:8.
- 139 Qurʾān 8:32.
- 140 Qurʾān 5:114.
- 141 Qurʾān 5:75.
- 142 Qurʾān 1:2–4.
- 143 Qurʾān 1:5.
- 144 Qurʾān 10:22.
- 145 Qurʾān 80:1–2.
- 146 Qurʾān 80:11.
- 147 Qurʾān 3:26.
- 148 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 383, Tr. No. 3348.
- 149 Qurʾān 26:78–82.
- 150 Qurʾān 34:24.
- 151 Qurʾān 34:24.
- 152 Qurʾān 11:35.
- 153 Qurʾān 39:43.
- 154 Qurʾān 5:104.
- 155 That is, as people usually do.
- 156 Qurʾān 17:79.
- 157 Qurʾān 5:52.
- 158 Qurʾān 2:216.
- 159 Qurʾān 2:21.
- 160 Qurʾān 6:152.
- 161 We have stated above that the learned Author does not appear to follow the usual meaning of the term *sharīʿa*, which has been confined to the tenets of faith and the strict law by the earlier jurists. The Author is diluting the meaning of the term again by implying that general practices, behaviour and ethical values as well as spiritual values are included in the *sharīʿa*. In this particular statement, he is trying to restrict the meaning to good practices or acts, but in the illustrations above he has included things that we have enumerated. The net result of the discussion appears to be that the secondary meanings in the texts cannot establish strict legal rules, but they can and do provide a basis for good practices and ethical behaviour. The regulation of behaviour that is not the subject matter of the law is, thus, included by him in the meaning of the term *sharīʿa*. We are not suggesting that the learned Author (God bless him) is not aware of such meanings. In fact, the Author's knowledge of the discipline of *uṣūl* and matters of *sharīʿa* is absolutely staggering. Matching wits with him is extremely difficult. We have noticed that when he uses terms in particular meanings, he is doing so intentionally and with a purpose. Accordingly, what we are saying here is that the learned Author has a plan; he is reframing terminology according to that plan. The whole plan will be visible when he has revealed his the total picture. Allāh knows best.

THE THIRD CATEGORY: THE INTENTION OF THE LAWGIVER UNDERLYING LEGAL OBLIGATIONS

The third category deals with the elaboration of the intention of the Lawgiver in laying down the *shariʿa* for the purpose of obligations that need to be followed. The discussion includes several issues, as follows.

The First Issue: Obligations and the Capacity of the Subject

It has been established in the discipline of *uṣūl* that the conditions of *taklīf* (obligation) and its causes¹ be within the power of performance of the subject. Thus, an act for which the subject does not have ability is not valid as an obligation in the *shariʿa*, even if it is rationally possible.² There is no utility of such a description here, because the *uṣūlis* have performed this function. We will, however, build upon this.

Accordingly, we say: When it becomes evident *prima facie* that the intention of the Lawgiver is that no obligation which is beyond the ability of the subject is imposed, then this refers to its prior occurrences, associated cases and surrounding circumstances. Thus, the words of the Exalted, “Then die not except in the state of submission (Islam).”³ The words of the Prophet (pbuh) in a tradition are, “Be a servant of Allāh who is killed rather than a murderer”,⁴ and in another, “Do not die as an unjust person.”⁵ There are others like these. The requirement here is only what is within the capacity of the individual, that is, (following) Islam, giving up of injustice and of murder, along with submission to the commands of Allāh. The same applies to all other texts of this nature.

Among them is the tradition of Abū Ṭalḥa in which he shielded the Messenger of Allāh (pbuh) during the Battle of Uhud when he wanted to come to the front so that the people could see him. Abū Ṭalḥa (God be pleased with him) said to the Prophet (pbuh), “Do not rise (come in view) O Messenger of Allāh and they will not be able to target you.”⁶ The words “will not be able to target you” are in this category.

The Second Issue: Obligation to Do the Impossible

If this is established, then the traits with which humans have been created, like yearning for food and drink, are not required to be removed, nor are the traits that have been embedded in their instincts to be eliminated. Doing so would

amount to an obligation to perform the impossible, like the requirement to do away with the physical defects that may be found in their bodies or the completion of what is deficient. All this is not within the ability of human beings. The Lawgiver does not intend requirements such as these nor does He prohibit them. He does require the coercing of the self from the commission of sins and what is unlawful, and releasing it to the extent of a balance in acquiring what is lawful. All this refers to what arises from acts that are related to these traits⁷ with respect to acquisition.

The Third Issue: Visible and Concealed Attributes

If it is established through an evidence that there are certain traits that resemble those that have preceded and are the natural traits of man, then these are similar to the natural traits. The reason is that natural traits are of two types. Among them are those that visible and can be sensed, and among them are those that are concealed, which can only be established through proof of their existence. An example is being impulsive. The apparent meaning in the Qurʾān is that it is a natural trait of man, due to the words of the Exalted, “Man is a creature of haste: soon (enough) will I show you My signs; so ask Me not to hasten them!”⁸ It is stated in a sound tradition, “When Satan saw that man was empty from within, he came to know that he has been created in such a way that he cannot restrain himself.”⁹ It has also been stated that “courage and cowardice are embedded instincts”¹⁰ and that “the natural instinct is love for the thing that is pleasing and hate for what is distasteful.”¹¹ There are other reports too of this nature. Among these has been placed anger, which is a deadly trait according to the virtuous. A tradition says, “A believer desires all good traits except dishonesty and falsehood.”¹²

When all this is established then what the demand apparently pertains to is of three types:

First: what is certainly not within his control. This is rare, like the words of the Exalted, “Then die not except in the state of submission (Islam).”¹³ The rule for this is that the demand is directed towards what it pertains to.

Second: what is certainly within his control, and these are the majority of the acts of the subject that are within his control. The demand pertaining to them in reality creates a valid obligation for such acts irrespective of whether these are demanded for themselves or for some external factor.

Third: those in which the position is not clear, like love and hate as well as feelings resembling them. The person examining them must probe their reality, and he should give a ruling in terms of the two above types on the basis of what is established in his view. What appears in feelings like love, hate, cowardice, courage, anger, fear and so on is that these are embedded in the nature of man by compulsion. This may be so because these are part of the essential nature – thus, only their associated acts are demanded, as whatever

is in the nature of man is followed by acts that are within his control. The demand is, therefore, directed towards these acts and not towards what they have arisen from, just as ability and inability are not the object of the demand. In the alternative, there may be a causative factor that brings these up so that they require certain other acts. If the urging factor is prior to the acts and the acts are such that they are within the control of a person, then the demand is directed towards it, as in the words of the Prophet (pbuh), “Give gifts to each other so that love between you increases.”¹⁴ This will amount to something like the words of the Prophet (pbuh), “Love Allāh due to the blessings He has granted to you”,¹⁵ by which he directed attention towards the blessings of Allāh upon His servant and the excessive favours done to him. It is also like the prohibition of glances that arouse carnal desire, which in turn leads to what is not lawful, even though carnal desire in itself is not prohibited.

Even though the urging factor is not within the control of the subject, the demand is directed at the associated feelings, like anger that gives rise to the desire for vengeance and just like glances that give rise to carnal desire for intercourse.

Sub-Issue: Affirming or Negating Concealed Attributes

It is through this aperture that the *fiqh* (understanding)¹⁶ of all the internal traits is to be understood or most of them like arrogance, jealousy, love of this world and lust, along with the calamities of the tongue that they give rise to including what al-Ghazālī has listed in the fourth part on perils.¹⁷

There are many traditions that indicate this meaning. Likewise the *fiqh* (understanding) of praiseworthy traits, like knowledge, reflection, consideration, conviction, love, fear, hope and whatever is similar to them and which is the result of acts. The traits of the heart (*qalb*), whether positive or negative, are not within the power of humans. Do you not see that knowledge, even though it is required, is not entirely within the power of man. When the seeker directs his attention towards the required object, it is attainable if it is from the category of the necessities, and it is not possible for him to avoid it. If it does not belong to the category of necessities, it is not possible to attain it without reflection, which is within his control to the exclusion of knowledge, because it is available to him after reflection as the conclusion is dependent upon the two premises. Thus, directing one’s reflection to it is within one’s control; therefore, it is alone the required act. Knowledge, however, is the consequence of reflection. It is the same whether we say that it is a creation of Allāh, the Exalted, like all other consequences with reference to their causes – as is the view of thinkers – or we do not say this. All are agreed upon the fact that it is not within the control of the person. Further, when it is attained, its removal is not possible under any circumstances.

The same applies to all internal traits. When you consider them you find them to be like this. When they are arranged in this way, obligation is not valid for such traits,¹⁸ even though apparently it may be as has appeared. This is also directed towards what precedes them, follows them or is associated with them. Allāh knows best.

The Fourth Issue: Instincts and Related Acts

The traits over which human beings have no power with respect to acquiring them or eliminating them are in themselves of two types:

First: those that are the results of acts, like knowledge and love, as in the words of the Prophet (pbuh), “Love Allāh due to the blessings He has granted to you.”¹⁹

Second: those that are embedded in their nature and are not the result of acts, like courage, cowardice, as well as gentleness and patience that were witnessed in the case of ‘Abd al-Qays’s fracture, and things of the same nature.

As for the first, it is obvious that recompense is related to them on the whole in so far as they are the consequences of causes that are within one’s control. It has preceded in the *Book of Ahkām* that recompense is related to them even though they are not within the power of a person nor are subject to his intention. Likewise love and hate are related to them in the same order.

The second type, which are part of nature, are examined from two perspectives:

First: whether they are dear to the Lawgiver or they are not.

Second: whether or not they are followed by reward.

As for the first examination, it is obvious from transmitted texts that recompense is related to love and hate. Do you not notice the saying of the Prophet (pbuh) about ‘Abd al-Qays’s fracture, “You possess two traits that Allāh loves: gentleness and patience.”²⁰ In certain narrations, he informed him that they are part of nature; in other traditions the words are: “Courage and cowardice are embedded instincts.”²¹ It is reported that “Allāh loves courage even if it is displayed in killing a snake.”²² A tradition says, “The spirits were ranked in groups. Those that came to know each other developed love for each other, while those that were at a distance from each other disagreed.”²³ This is the meaning of mutual love and hate, and it is not acquired. A tradition has been transmitted as, “My love becomes obligatory for those who love each other due to me.”²⁴ The tradition of Abū Hurayra, “A believer who is strong is better and dearer to Allāh as compared to one who is weak, but in each one there is good”,²⁵ is interpreted to mean bodily strength and uprightness in acts, while weakness is the opposite of this. Another report says, “Allāh loves a higher level morality and disapproves of lack of morality”,²⁶ and “A believer desires all good traits except dishonesty and falsehood.”²⁷ Allāh the Exalted has said, “Man is a creature of haste.”²⁸ This was said by way of blame and

disapproval; therefore its opposite is dear, and that is patience. It is not to be said that love and hate are related to the acts they give rise to, because: first, it amounts to moving out of the apparent meaning without evidence; and second, their relationship with nature is valid, and it is at a greater distance from acts as compared to qualities, as in the words of the Exalted, “O ye who believe! If any from among you turn back from his faith, soon will Allāh produce a people whom He will love as they will love Him – lowly with the believers, mighty against the rejecters, fighting in the way of Allāh, and never afraid of the reproaches of such as find fault”,²⁹ and in the words of the Prophet (pbuh), “Love Allāh due to the blessings He has granted to you”,³⁰ and “It is part of faith to love on account of Allāh and to hate because of Him.”³¹

In all the above cases, it is not proper to say that the meaning is love of acts alone. Likewise, it is not to be said about qualities – when love is apparently directed towards them – that the meaning is acts.

Sub-Issue: Love and Hate Related to Acts

When this is established, then it is also valid that love and hate are related to acts, as in the words of the Exalted, “Allāh loveth not that evil should be noised abroad in public speech, except from one who had been treated unjustly; for Allāh is He who heareth and knoweth all things”,³² and “Allāh was averse to their being sent forth; so He made them lag behind.”³³ A tradition says, “The most hated of permitted things for Allāh is divorce”,³⁴ and “No one loves to be praised more than Allāh does, and for this reason He praises Himself.”³⁵ This is sufficient.

When you say “I love courage and dislike cowardice”, then this is love and dislike of the person described on account of this quality, as in the words of the Exalted, “Allāh loves those who do good”,³⁶ “Allāh loves those who are firm and steadfast”,³⁷ and “Allāh loves those who turn to Him constantly; and He loves those who keep themselves pure and clean.”³⁸ The Qur’ān also says, “Allāh loveth not any arrogant boaster”³⁹ and “Allāh loveth not those who do wrong.”⁴⁰ A tradition says, “Allāh dislikes fat rabbis.”⁴¹

Accordingly, love and hate are used in the unqualified sense for personal qualities, traits and acts. Their relationship is with nature in so far as it is a personal quality, attribute or act.

As for the second examination,⁴² it is by saying: Is it valid that reward and punishment are related to these attributes, when they are not within the power of the person who is attributed with them? This is to be viewed from three perspectives: First, that no reward or punishment is related to these qualities. Second, that both are related to them together. Third, that one of them is related to them to the exclusion of the other. As for this last perspective, the examination is from two perspectives as it is a compound of both. As for the first perspective, it is indicated in two ways:

First: the qualities that are embedded and those that are similar to them are not required to be eliminated nor acquired according to the *shari'a*, because it will amount to an obligation to do the impossible. Consequently, what is not required by way of obligation is not to be associated with reward and punishment, because reward and punishment are subject to obligation according to the *shari'a*. Thus, the qualities indicated have no reward and no punishment.

Second: the reward and punishment for these qualities are either from the perspective of the self, in so far as they are qualities, or from the perspective of their related aspects. If they are the first, then it necessarily follows that they be rewarded, whether or not they are qualities that are liked or disliked according to the *shari'a*. They are also to be considered punishable in the same way, because what is deemed necessary for a thing is deemed necessary for its like. In such a case, two opposites come together for the same single quality from the same perspective. This is impossible, even though it is due to the related aspects. Thus, reward and punishment are for the related aspects, which are acts and omissions, and not for the qualities. This establishes the fact that they are not rewarded or punished for themselves, which is the required meaning.

As for the second perspective, it is also indicated by two things:

First: the qualities mentioned are related to love and hate, and love and hate here are from Allāh the Exalted. The meaning is either that love and hate amount to a blessing or retaliation in themselves, in which case they become attributes of acts, according to those who uphold this, or the meaning is the intention to reward or punish, in which case they refer to personal qualities. The reason is that both meanings understood through the speech of the Arabs are not possible together for Allāh to will,⁴³ and this is the view of another group. On both interpretations, love and hate refer to blessings and retaliation themselves, which are the essence of reward and punishment. Consequently, love and hate are related to the qualities mentioned.

Second: if we assume that love and hate do not refer to reward and punishment, then these are related to qualities. This relationship may either be necessary or it may not be so. If it is necessary then this is what is required. If it is not necessary, then the relationship of love and hate is either with the self, which is impossible, or it is due to an external factor that refers to Allāh, the Exalted, which is impossible. The reason is that Allāh is free of wants pertaining to the world. The Exalted is in no need to turn to someone or to need something for completion; rather, he is free from want in the absolute sense and perfect in every sense. On the other hand, it may refer to the subject (due to an external factor), which is recompense and nothing more; therefore, it refers to the subject.

Third: if it is conceded that love and disapproval are from the perspective of related aspects, which are acts, then recompense for these acts along with

these qualities are like recompense for them without these qualities, or it is not so. If the recompense is different, then the qualities will be assigned a part of the recompense, which is required. If it is equal, it follows necessarily that the act of having a fracture by ‘Abd al-Qays, when he exhibited calmness and patience, is equal to an act that is not attributed with these two qualities but where the incident is the same. This is not valid due to the consequence that what is lovable for Allāh is equal to what is not so. Induction throughout the *shari‘a* goes against this. Further, it necessarily follows that what is loved is not loved, and *vice versa*, which is impossible.

It therefore follows that for traits there is a share of reward and punishment. If it is established that it has some share, an unqualified share is established. Thus, embedded qualities and what resembles them are recompensed. This is what we intended. The evidences that have preceded conveying that there is no reward for them are difficult to accept.

As for the first (difficulty), reward and punishment with respect to obligation are not interdependent. Reward and punishment are sometimes awarded for things that are beyond the control of the subject. At other times, an obligation exists but there is no reward and no punishment. The first is illustrated by the calamities that descend upon humans out of compulsion, whether or not they are aware of them. The second is like one who drinks wine and one who visits a fortune-teller, as it is reported that “prayer offered by him was not accepted for forty days.”⁴⁴ It is not known that anyone from among the scholars of tradition has claimed lack of recompense for prayer when its essential elements and conditions are complete. There is also no disagreement about the obligation of prayer for each Muslim, whether in possession of moral probity or disobedient. When these two are not interdependent, the evidence is not valid.

As for the second (difficulty), it is the objection raised against the third evidence that indicates recompense. The words of the person objecting are: Recompense is associated with commission and omission when these are merely intended, just as they are associated without an existing trait. The nullity of this argument is established. If he meant “along with the associated quality”, then the quality comes to possess an influence on reward and punishment. This amounts to the validity of the evidence indicating permissibility of recompense for the quality, not its negation.

The one who holds the first view may object to the second on the basis of the following arguments:

First: if the meaning of love and hate has become related to reward and punishment, it will be denied that they are related to what is beyond the ability of the subject, and these are embedded attributes and personal traits.

Second: the classification is not exhaustive because it is possible they may be related to an external factor that is linked to the subject without reward

and punishment. This is like being described as good (*hasan*) and evil (*qabiḥ*) in the course of practice.

Third: as acts arise out of traits, they occur as complete or deficient in accordance with (the strength of) these traits. We are informed of the perfection of the craftsmanship according to the perfection of the craftsman, and the same is the case here. In such a case, reward is associated with acts, and the differences are to be related to the differences in acts not to traits. This is what is required.

The result is that both sides bear attraction for the examination, and research is needed on a more elaborate and wider scale, but there is no need for it at this point. Success lies with Allāh.

The Fifth Issue: Forms of Hardship

The preceding discussion has been about obligations that are not within the power of the subject. It now remains to be seen what is within his power, but it creates hardship for him. This is the occasion of it. It does not necessarily follow that if we have come to know that the Lawgiver has negated obligations to do the impossible, we also come to know that He has negated obligations with different types of hardship. It is for this reason that in earlier (religious) laws obligation with hardship stands established, but not obligation to do the impossible.

Further, obligation to do the impossible has been denied by many wise persons; in fact, by most scholars from among the Ashʿarīs and others.⁴⁵ As for the Muʿtazila, this is a basic principle for them,⁴⁶ as distinguished from obligation with hardship. If this is the case, then it is necessary to examine it from the perspective of this excellent *sharīʿa*.

Prior to going into what is desired, it is essential to go into the meaning of the word *mashaqqa* (hardship). It is derived from *shaqqa*, which means becoming difficult, and it is this meaning that is found in the words of the Exalted, “And they carry your heavy loads to lands that ye could not (otherwise) reach except with bodies distressed (*shiqq*).”⁴⁷

Al-Shiqq is a term derived from *mashaqqa*, and if this meaning is considered in an unqualified sense without turning to Arabic forms, it gives four technical meanings:

First: the meaning in the general sense that includes both what is within one’s power and other things. Thus, an obligation to do the impossible will be called *mashaqqa* in so far as a person requires himself to bear it thereby placing himself under a burden and difficulty that is not of any use, like a disabled person trying to stand or a human trying to fly and so on. When something that is possible to perform is combined with the arduous that in itself is toilsome, the act is called burdensome and difficult, and there is hardship in bearing it.

Second: the meaning that is specific to what is within one’s power to perform, but is beyond the usual and normal acts so that the person becomes

perturbed and agitated in performing what this hardship entails. This meaning, however, is of two types:

First meaning: the hardship is specific to identified acts that are obligatory, so that even if the act is performed once, there is hardship in it. It is these acts for which exceptions (*rukhaṣ*) that are well known in the jargon of the *fuqahā*³ (jurists) are laid down, like not fasting during illness and journey, curtailing of prayers during journey and so on.

Second meaning: it is not specific to acts, but when general acts are performed persistently they become burdensome, and the person performing them feels the hardship. This is found in the case of supererogatory acts alone when the worshipper performs them to an extent that is beyond what is normally done so that persistent performance tires him. He does so to an extent that the body feels the same burden that is felt in acts that are burdensome when performed even once in the first meaning. It is these acts in which the *shariʿa* has prescribed kindness and the performance of acts with which the performer does not become fed up. This is in accordance with what is pointed out by the prohibition pronounced by the Prophet (pbuh) about continuous fasting, abstention and exaggeration. He (pbuh) said, “Adopt those acts that you are able to perform, because Allāh will not tire (of giving reward), but you will become weary”,⁴⁸ and “Adopt a middle course so that you can meet it.”⁴⁹ There are many reports on this point, but attention will be drawn to it at another occasion. Here the hardship arises from a factor that is universal, while in the first meaning it arose from a particular.

Third: the hardship in this sense pertains exclusively to what is within the power of the subject, but it does not have the effect of tiring the body more than what is normal in ordinary acts. However, there is an excess in the obligation itself over the normal acts that existed prior to the obligation, and this is burdensome for the body. It is for this reason that the term *taklif* (burden) has been used for it, and in the literal meaning the term implies hardship. Accordingly, the Arabs say, “I placed a burden (*taklif*) on him” – that is, “I asked him to undertake a task that creates hardship for him, and I ordered him to do it.” The word *taklif* is also used when you undertake to do a burdensome act, or one that you cannot perform except with some burden. Things like this are termed *mashaqqa* in this meaning, because it amounts to giving up ease and facility and undertaking of acts over and above what is required by the life of this world.

Fourth: the term applies exclusively to what a person considered necessary for himself prior to this imposition. *Taklif* (obligation) is taking the subject out of the compulsion of his own whim. The opposition of one’s whim amounts to hardship in the absolute sense and consequently imposes on a human being burdens and struggle. This is known from the practices of the created beings.

These then are five meanings, organized into four, from the perspective of hardship itself.

As for the first, it has been dealt with in *uṣūl al-fiqh*, and the preceding has dealt with it here. As for the second, it is (the sixth issue below).

The Sixth Issue: Hardship That Is above the Normal

The Lawgiver has not meant the obligations to be severe and coercive. The evidence for this comes from several perspectives:

First: the first are the texts that indicate this meaning, like the words of the Exalted, “He releases them from their heavy burdens and from the yokes that are upon them”,⁵⁰ and “Our Lord! Lay not on us a burden like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector.”⁵¹ In response to this, a tradition says, “Allāh, the Exalted has said, ‘I have done so.’”⁵² Allāh, the Exalted, also says, “On no person doth Allāh place a burden greater than it can bear”,⁵³ “Allāh intends every facility for you; He does not want to put you to difficulties.”⁵⁴ “He has chosen you, and has imposed no difficulties on you in religion”,⁵⁵ “Allāh doth wish to lighten your (difficulties): for man was created weak (in resolution)”,⁵⁶ “Allāh doth not wish to place you in a difficulty, but to make you clean, and to complete his favour to you, that ye may be grateful.”⁵⁷ The traditions say, “I have been sent with the true and merciful religion”,⁵⁸ “Where a choice has been given between two things, the lighter of the two has to be adopted as long as it does not amount to a sin.”⁵⁹

He said, “As long as it does not amount to a sin” because there is no hardship in the giving up of a sin in so far as it is just a matter of omission.⁶⁰ There are other texts that convey a similar meaning. Had He intended hardship, He would not have desired ease and leniency, thus, He would have intended hardship and difficulty. This is null and void.

Second: the second perspective is that of what has been established in the case of exemptions (*rukhaṣ*), which is something that is definitive. Among these are those exemptions that have been derived from the religion by way of necessity, like the exemption of curtailing prayers, not fasting, combining prayers, and the consumption of prohibited things under duress. This is a category that definitively conveys an absolute meaning of removal of harm and hardship. Likewise the prohibition of trying to seek out detailed meanings, indulging in exaggeration and looking for causes to prolong acts of worship. Had the Lawgiver intended hardship in obligations, there would have been no exemptions or leniency.

Third: there is consensus (*ijmāʿ*) on the absence of hardship in the *shariʿa*. Had it existed,⁶¹ there would have been disagreement and contradiction in the *shariʿa*. This is not to be found in the *shariʿa*. If the *shariʿa* had been applied with the intention of imposing severity and hardship, when it has been established that it is based upon the intention of kindness and ease, combining

the two meanings would have led to contradiction and disagreement. The *shariʿa*, however, is devoid of such a meaning.

As for the third, it is (the seventh issue below).

The Seventh Issue: The Aims of Obligation

There is no disagreement about the fact that the Lawgiver has intended some form of striving and hardship in obligations, but this is not termed hardship in normal practice, just as the seeking of livelihood through professions and craftsmanship is not usually termed hardship. The reason is that it is possible that there are acts in which striving is usually not terminated as matter of practice, but reasonable persons and experienced people call such termination laziness, which is a matter of blame. The same is the practice in obligations as well.

The distinction between hardship that is not counted as hardship and hardship that is really so refers to this meaning. If the constant performance of an act results in its termination or in part of it, or there occurs a disturbance in it due to the state of the person, his wealth, or any other circumstance, then the hardship involved is not the usual. If there is usually no such thing in the performance of the act, it is not counted as hardship in normal practice, even though it can be termed a burden. The affairs of humans are all burdens in this world, in their eating and drinking and all their transactions, but they have been granted the ability to bring these transactions within their control, and not that they should be under the control of transactions. Likewise, the obligations. It is in this way that the hardship in obligations and what they entail is to be understood.⁶²

After this is determined, then the usual hardship established for servants and included in obligations is also not intended by the Lawgiver as a requirement in so far as it is hardship. It is intended from the perspective of the interests that are secured for the subject. The evidence for this is what has preceded in the issue prior to this.⁶³

Suppose it is said that what has preceded does not indicate the lack of intention to impose hardship due to the following arguments:

First: the very term *taklif* indicates this, because its real meaning in the language is something in which there is a burden, which is hardship. Thus, the words of the Exalted, “On no person doth Allāh place a burden greater than it can bear”,⁶⁴ mean that He does not require something that becomes severe for him thus entailing hardship that is beyond the person’s ability. In fact, He requires what is easy and within his normal ability. This establishes that *taklif* involves hardship, and the commands and prohibitions necessarily require hardship. The demand is related to an act in so far as it involves hardship, because the Lawgiver has called it *taklif* (burden). Consequently, it is what He has intended. It is in this meaning that the following verse

was revealed, “He has chosen you, and has imposed no difficulties on you in religion.”⁶⁵

Second: the Lawgiver is aware of the obligations being imposed and what they entail. It is also known that mere obligation necessarily imposes hardship. Thus, as the Lawgiver is aware of the necessity of hardship without denying it, then it necessarily follows that He requires hardship, on the basis that one who makes an intention of the cause with the knowledge of what consequences will follow is making an intention for the consequences. This issue was settled earlier in the *Book of Ahkām*, and it requires that the Lawgiver intends hardship here.

Third: hardship, on the whole, is rewarded when it accompanies obligation, irrespective of the reward associated with the obligation, as is evident from the words of the Exalted: “Because nothing could they suffer or do, but was reckoned to their credit as a deed of righteousness – whether they suffered thirst, or fatigue, or hunger, in the Cause of Allāh”⁶⁶ and “And those who strive in Our (cause) – We will certainly guide them to Our paths: for verily Allāh is with those who do right.”⁶⁷ Further, it is conveyed in traditions about covering more ground towards the mosques,⁶⁸ with more reward being given to those who are far away, as well as completing the ablution and bearing irksome things.⁶⁹

This meaning is also indicated in the words of the Exalted, “Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allāh knoweth, and ye know not.”⁷⁰ As there are tremendous hardships in battle, Allāh the Exalted said, “Allāh hath purchased of the believers their persons and their goods; for theirs (in return) is the garden (of paradise): they fight in His cause, and slay and are slain: a promise binding on Him in truth.”⁷¹ There are other texts similar to these.

When there is hardship, in so far as it is hardship that is over and above the normal obligations, and it is rewarded, the indication is that it is intended by Him. If it had not been intended, there would be no reward for it – as in the case of all the remaining acts that are not considered obligations. The subject brings it about through his choice in accordance with what is mentioned in the *Book of Ahkām*. All this indicates that the Lawgiver intends the requirement of hardship through obligations, and this is the required objective here.

The response to the first argument is that when an obligation is directed towards the subject, the intention can appear in it in two ways:

First: that He intends it from the perspective that it is hardship.

Second: that He intends it from the perspective that it is a secured interest (*maṣlahā*) and is a blessing for the subject in this world and the next.

As for the second (response), there is no doubt that the intention of the Lawgiver is about conduct, and the *sharīʿa* in its entirety expresses this, as has preceded in the beginning of this book (volume).

As for the first, we do not accept that He intended this, and two intentions do not make their interdependence necessary. Thus, the physician intends through the giving of sour and distasteful medicine, the letting of veins and the cutting of infected flesh, the benefit of the patient and not the infliction of pain, even though he is aware of the resulting pain. The same is to be conceived in the case of the intention of the Lawgiver with respect to the welfare of humans in this world and the next through the imposition of obligations. There is consensus on the point that the Lawgiver intends, through the imposition of obligations, the securing of the interests of people as a whole. The disagreement is about His intention related to hardship. It is called *taklīf* in consideration of what it makes binding, according to Arabic usage, which assigns a term to a thing according to its impact. This is so, even where in practice, it is not used according to its derivative meanings, other than figurative meanings, but in its actual literal application.

The response to the second objection is that knowledge of the consequences arising from the causes, even though it is established that it acts as a substitute for intention with respect to the subject, applies to intention only in some respects. I mean, with respect to the *ahkām* (rules) of the *sharīʿa* in so far as they are extended as a whole through causation and not that He has intended injury in reality, because we have assumed that He only intends the benefit itself. If He does not intend (injury), then this is what is required with respect to the Lawgiver, as He intends the securing of interests and not what follows in the form of some injuries. The determination of this issue has preceded in the *Book of Ahkām*, and the elaboration will be coming up later, God willing.

Further, if it follows from the Lawgiver's intention underlying obligations that a harm arises on the way to the securing of interests and that this amounts to the intention to impose a harm, then this leads to the nullification of the proof about the validity of the laying down of the *sharīʿa* to secure interests and not harms. It also follows, especially with respect to our issue, that he intends the elimination of hardship and its occurrence at the same time. This is impossible and void rationally as well as on the basis of transmission.

In addition, it cannot be denied that the intention of the physician in administering sour medicine, cutting of infected flesh, extracting painful teeth and incising wounds is the protection of the patient as he desires, even though it entails the torment of the patient. The purpose is the securing of his interest, which is greater and more emphatic in his care than the torment of the harm that necessarily follows. This is the method of the *sharīʿa* always. If an obligation is imposed, it is to be followed, even if it leads to hardship, because the purpose is to secure interests, and obligations are always imposed in this manner. It is known through the Lawgiver that hardship is prohibited; therefore, if He commands something from which it necessarily follows, then He does not intend it. If He had intended it, then He would not

have prohibited it. Consequently, what results from usual acts is not termed hardship in practice. The conclusion from this is that there is no hardship in the *taklif* (the burden) that accompanies normal acts and things within the same category, as has preceded. Thus, what follows from *taklif* is not called hardship; therefore, knowledge of its occurrence does not imply a demand for it or an intention to impose it.

The response to the third objection is that reward is derived when the hardship necessarily occurs from the obligation alone, and it is through this (hardship) that the obligated act is performed. It is in this context that it is intended, but it is not intended in the absolute sense. The Lawgiver has assigned additional reward in lieu of it over and above the reward for the basic act. This does not indicate that it is primarily intended, but it does support the idea that reward is attained through hardships, even if it is not the consequence of the desired act, like a person being rewarded and his sins being written off on account of the hardship and struggle that he goes through. This is indicated by the words of the Prophet (pbuh), “Whatever a believer is afflicted by through suffering, exhaustion, distress, sorrow or even a thorn prick is taken into account by Allāh to write off his sins.”⁷² There are other traditions like it.⁷³

In addition to this, if it is known that a prohibited thing will result from a permitted act, such a knowledge will not amount to forming an intention to commit the prohibited thing itself. Likewise, the scholars agree about the prohibition of an intention to bring about the prohibited act that necessarily follows from a permitted act, and they disagree about the case where it is not so intended. The determination of this point will be coming up, God, the Exalted, willing.

Sub-Issue: Intending Hardship in Acts

Another rule arises from this (the preceding), which is that the subject is not to intend the hardship in the obligation due to the greater reward associated with it; rather, he is to intend the act, in so far as it is an act, that has been assigned greater reward due to the enhanced hardship. This second rule runs through obligations of all acts where the act upon which reward is assigned is in itself intended. This is also the intention of the Lawgiver in laying down obligations for acts, and what conforms with the intention of the Lawgiver is what is desired.

As for the first, the rule is “acts are determined by intentions”, and intentions are taken into account in transactions as will be mentioned at the proper occasion, God willing. Thus, only those intentions are valid that conform to the intention of the Lawgiver. If the subject intends the occurrence of hardship then he opposes the intention of the Lawgiver in so far as He does not intend hardship itself in the obligation. Each intention that goes

against the intention of the Lawgiver is null and void. Thus, forming an intention of hardship is null and void. It therefore belongs to the category of things prohibited, and what is prohibited carries no reward, rather there is sin in it if the proscription rises to the level of the prohibited. Accordingly, seeking reward with intention of entering into hardship is a negative intention.

Suppose it is said that this goes against the tradition of Jābir (God be pleased with him) in the sound compilation (of traditions). He said that some vacant plots of land existed around the Mosque, so the Banū Salama decided to move close to the Mosque. When this information reached the Messenger of Allāh (pbuh), he said to them, "I have heard that you intend to move close to the Mosque."

They said, "Yes, O Messenger of Allāh, we do intend doing that." He said, "Banū Salama! Your houses (live in them) as your steps (to the mosque) are recorded; Your houses (live in them) as your steps (to the mosque) are recorded."⁷⁴ One narration says, "We were delighted (by these words) more than if we had moved."⁷⁵ In another narration from Jābir, He said, "Our houses were far away from the mosque, so we decided to sell our houses and move closer to the mosque. The Messenger of Allāh (pbuh) prohibited our doing so saying, 'For each step there is for you a degree of elevation.'⁷⁶

In the selections of Ibn al-Mubārak, it is narrated from Abū Mūsā al-Ash'arī, who said that he was in a ship whose paths out to the sea were blocked, when a man said, "Those on board the ship!" He said this seven times. We said to him, "Do you not know of the condition we are in?" He said after the seventh time, "Allāh's decision for Himself is that if someone keeps himself thirsty for the sake of Allāh on a hot day, Allāh will quench his thirst on the Day of Judgement." Abū Mūsā, in pursuit of this, used to fast on hot days.⁷⁷

In the *shari'a* there are other such reports that indicate that the intention of the subject to take extreme action in the case of worship and other obligations is valid and is rewarded. Thus, he (pbuh) ordered those who wished to move (near the mosque) to stay on due to the greater reward on account of more steps. They became like the person who is faced with two courses of action, one of them easy and the other difficult. He ordered them to follow the more difficult path, promising them reward. In fact, a prohibition was pronounced instructing them to pursue the greater reward.

Ponder also over the state of the *awliyā'* (friends of Allāh) for they adopted methods of worship that brought them to the limits of their strength, so much so that it became a basic principle with them to adopt the primary rules and give up exemptions totally. All this amounts to an evidence that goes against what has preceded.

There is a tradition from Ubayy ibn Ka'b, also in the sound compilations, who said that there was a person whose house was at the greatest distance in Medina, and he did not miss a prayer with the Messenger of Allāh (pbuh). He

said, “We confronted him and said to him, ‘O so and so, if only you would buy a donkey it would protect you from the severe heat and wild animals?’ He said, ‘By Allāh, I do not wish that my house be adjacent to the house of the Messenger of Allāh (pbuh).’ He said, ‘I let him ride with me until we came to the Prophet of Allāh (pbuh) where I informed him of his case.’ He (pbuh) called him, so the man said the same thing to him and added that he hoped for greater reward for his walk. The Prophet (pbuh) said, ‘You have what you have reckoned.’”⁷⁸

In response we say:

First: the reports are all individual narrations (*āhād*) on a single issue from which a definitive induction cannot be derived. Probable meanings do not oppose definitive meanings. What we are dealing with is definitive.

Second: these traditions do not contain evidence of an intention for hardship itself. The first tradition occurs in al-Bukhārī⁷⁹ as elaborated. The additional words in the text are: “He (pbuh) disapproved (of the fact that) the city be exposed from this side so that guarding it from this side should not be given up.”

It is related from Mālik ibn Anas that this person first settled in ‘Aqīq and then moved to Medina. It was said to him while he was at ‘Aqīq,⁸⁰ “Why have you settled in ‘Aqīq, the distance will create hardship for you?” He replied, “The report has reached me that the Prophet (pbuh) used to like it and he received revelation here.”⁸¹ Some of the Anṣār wished to move from there to a location closer to the mosque, so the Prophet (pbuh) said to them, “Do you not reckon your steps?”⁸² Mālik understood from the words, “Do you not reckon your steps?” that these were not meant to indicate hardship, but to point out the significance of the location⁸³ from which they wanted to move.

As for the tradition of Ibn Mubārak, it is proof for the act of a Companion (God be pleased with him), if the narration from him is proved to be authentic.⁸⁴ Further, it contains the report that greater reward is established for one who faces greater hardship in his worship like ablution in severe circumstances as well as thirst and hardship during *jihād*. Thus, Abū Mūsā al-Ash‘arī’s choice of fasting on a hot day is like the choice exercised by preferring *jihād*⁸⁵ over supererogatory prayers and charity, and so on. It does not mean that there is an intention to inflict hardship on the self so that reward is secured. The intention here is to undertake worship whose reward is greater due to the greater hardship. Hardship in such a case is secondary and not primary. Our discussion is about the hardship that is not considered secondary in the intention. The same applies to the tradition of the person from the Anṣār; there is nothing in it to indicate the adoption of extreme measures. It does contain evidence of the intention to be patient in the face of hardship due to the distance of the mosque so that the reward is greater. The same is the case with all the remaining texts that convey these meanings.

As for those who have attained spiritual states, their purpose is to undertake worship for the sake of the worshipped and the giving up of their personal comforts in doing so. It is not proper to say that they merely intended extreme measures for their bodies and the bearing of hardship. This is based upon the evidence that has preceded, and on the basis of what will be coming up, God willing.

Third: the argument given by the objector on the basis of the prohibition by the Messenger of Allāh (pbuh) for those who intended extreme measures by cutting themselves off from society, where one of them said, “As for me, I will fast without break.” Another person said, “As for me, I will pray constantly without sleeping.” Yet another said, “As for me, I will not cohabit with women.” He (pbuh) refuted their aims and pointed out that he himself did all these things (which they were denying to themselves). He (pbuh) said, “He who deviates from my *sunna* does not belong to me.”⁸⁶ A tradition says that “the Prophet (pbuh) denied total seclusion for ‘Uthmān ibn Maẓ‘ūn. Had he permitted him we would have become castrated.”⁸⁷ He (pbuh) also rejected the act of “a person who made a vow that he will stand in the sun while fasting. He ordered him to complete his fast, but in the shade.”⁸⁸ He (pbuh) said, “Those who cross the limits perish.”⁸⁹

The prohibition by the Prophet (pbuh) of adopting extreme methods (of worship) is well known in the *shari‘a*, so much so that it has become a definitive principle. If it is not the intention of the Lawgiver that the body be subjected to extreme hardship, then such intention of the subject is contrary to the intention of the Lawgiver where He has intended leniency, which is known and definitive. Where his intention contradicts the intention of the Lawgiver, it becomes a nullity and is not valid. This is evident. Success comes from Allāh.

Sub-Issue: The Subject Is Not to Opt for Hardship

Another principle is also based upon what has preceded, which is (explained by saying) that when hardship arises from permitted acts – obligatory, recommended and permissible – then it is either the usual for such acts or it is not. If it is the usual, then it is for such hardship that the preceding discussion has taken place, with the conclusion that it is not what is intended by the Lawgiver in so far as it is hardship. In such a case, it is either with the choice of the subject, even though the act does not essentially require it, or it is not. If it arises because of the choice of the subject then it is prohibited and it is not proper to worship with such hardship, because the Lawgiver does not intend harm in what he has permitted.

An illustration of this is the tradition⁹⁰ of the person making a vow to fast while standing in the sun. It is for this reason that Mālik (God bless him) said about the words “He ordered him to complete his fast, but in the shade” that “he ordered him to complete what amounted to obedience to Allāh, and

forbade him from doing what amounted to disobedience to Allāh.”⁹¹ The reason is that Allāh has not made the tormenting of bodies a means of nearness to Him nor for access to what is with Him, which is obvious. This prohibition, however, is conditional upon the fact that he introduces this hardship directly and on his own, and it is not caused by undertaking the act, as in the illustration. The rule for it is, therefore, evident.

If the hardship is secondary to the act, as in the case of one who is ill and not able to fast or to perform his prayer in the standing posture, or it is like a pilgrim who cannot undertake the pilgrimage on foot or while riding, except with hardship that is beyond the ordinary in such an act, then it is in such a case that the words of the Exalted were revealed: “Allāh intends every facility for you; He does not want to put you to difficulties.”⁹² It is in such cases that the legality of exemptions was ordained.

If the person concerned acts upon the exemption, then it is good, and it is possible that he be doing it for what is allocated to him so that he accepts the exemption granted by his Lord in compliance with the permission. If he does not act according to the exemption then this gives rise to two situations:

First: that he knows or thinks that he will be encountering in his self, body, mind or habit, such disturbance that will adversely harm or affect him, due to which he will dislike the act. This is something in which he does not have a right. Likewise where he does not know so or think in this way, but when he undertakes the act such things affect him. The rule for him is to adopt what the confused person does. It is for such cases that it was said, “It is not piety to fast during a journey.”⁹³ It is also in such cases that the proscription about prayer is relevant when food has been laid out, or when a person is resisting the pressure of the calls of nature.⁹⁴ He (pbuh) said, “The *qāḍī* is not to issue a ruling when he is angry.”⁹⁵ The Qurʾān says, “Approach not prayers when you are intoxicated.”⁹⁶ To these may be added other texts in which a proscription is laid down due to the possibility of not completing a permitted act. The intention of the Lawgiver is to protect the act of the servant, making it devoid of distress and free of interference so that he is in a state of ease and facility at the time of undertaking it, thus staying within the ambit of the obligation.

Second: that he knows or thinks that such disturbance will not affect him, but there is in the act hardship that is beyond the usual. This too is the occasion for exemption as a whole, and the details were spelled out in the *Book of Ahkām*. The underlying cause in this is that the excess of hardship gives rise to distress. In fact, hardship itself is distress and harm, even though he can bear it patiently, but it is something that is not usually borne with patience. The exception is that there is a third element, which is that the hardship is beyond the usual, but for some people it belongs to the usual. Perhaps the matter is like this: that those who have attained spiritual states from among the servants who seclude themselves in their devotion to Allāh, those supported in their striving to meet obligations, are the ones who have been singled out with

this trait. They become those who are supported in their secluded devotion. Have you not pondered over the words of the Exalted, “Seek (Allāh’s) help with patient perseverance and prayer: it is indeed hard, except to those who are humble.”⁹⁷ It is hard for the subject, but from this the God-fearing have been exempted, those whose Imām is the Messenger of Allāh (pbuh), the joy of whose eyes was prayer, so much so that he used to turn to it from the weariness of worldly matters, who used to continue praying until his feet were swollen. If this is the case, then the person who has inherited this has been given this blessed trait.

This category requires a prolonged discussion and penetration, for it is a point that has rarely been discussed despite the emphasis on it in the fundamentals of the *shari‘a*.

Sub-Issue: Removal of Injury

Know that harm is removed from the subject for two reasons:

First: on account of fear of brigands on the highway, hate of worship and dislike of obligations. Included under this meaning is the fear of irregularity with respect to his body, mind, wealth and circumstances in general.

Second: fear of shortcomings when faced with the various types of duty related to the subject. These are like taking care of his wife and children along with other burdens borne on the way to the performance of this function. Perhaps, being involved with some tasks diverts his attention from these and cuts him off from undertaking them. At times, his attempt to perform both to his satisfaction cuts him off from both.

As for the first, Allāh has laid down this blessed, pure, gentle and easy *shari‘a* to protect the hearts of the created beings and preferred this for them. If they go against its directives of adopting ease and facility, they will be faced with hardships in their obligations. Have you not pondered over the words of the Exalted, “And know that among you is Allāh’s Messenger: were he, in many matters, to follow your (wishes), ye would certainly suffer: but Allāh has endeared the faith to you, and has made it beautiful in your hearts, and He has made hateful to you unbelief, wickedness, and rebellion: such indeed are those who walk in righteousness: A grace and favour from Allāh; and Allāh is full of knowledge and wisdom.”⁹⁸ The verses elaborate that Allāh has endeared faith to us with ease and facility, making it beautiful in our hearts and promising us His grace and favour as compensation.

A tradition says, “Adopt those acts that you are able to perform, because Allāh will not tire (of giving reward), but you will become weary.”⁹⁹ In the tradition of the prayers of Ramaḍān it is said, “Thereafter, your (inner) state is not concealed from me, but I was afraid that this night prayer might be made obligatory for you, making you weary of it.”¹⁰⁰ In the tradition of Ḥawlā’ bint Tuwayt in which ‘Ā’isha (God be pleased with her) said that it was believed

about this Ḥawlāʾ bint Tuwayt that she did not sleep during the night (for worship), so the Messenger of Allāh (pbuh) said to her, “You do not sleep during the night? Adopt those acts that are within your ability. By Allāh, He will continue to give you reward until you become weary.”¹⁰¹ It is stated in the tradition of Anas (God be pleased with him), “The Messenger of Allāh (pbuh) entered the mosque when there was a rope stretched between two pillars. He asked, ‘What is this?’ They said, ‘A rope for Zaynab. She prays here and when she feels tired or drowsy she holds on to it.’ He said, ‘Untie it. When you pray you should be alert, and when you feel tired or drowsy you should sit down.’”¹⁰² There is the tradition of Muʿādh (God be pleased with him) when the Prophet (pbuh) said to him, “O Muʿādh, are you one who creates a trial?” when he prolonged the prayer for the people. He said, ‘There are among you those who are repelled. Whoever leads the prayer for the people should not prolong it, for there are among them the weak, the old and those compelled by need.’”¹⁰³ He (pbuh) forbade them from fasting continuously and from making vows. He said, “Allāh makes the stingy pay this way, but it does not make any difference to what Allāh has determined”, or as he said. All this is based on a rationale and reason as indicated by what has preceded, including fatigue, weariness, inability, hate and dislike for obedience.

It is related from ʿĀʾisha (God be pleased with her) from the Prophet (pbuh), “This religion is strong, so enter it with gentleness. Do not make the worship of Allāh hateful for yourself, because the one who is cut off from the rest does not complete his journey nor does he have mercy on the ride.”¹⁰⁴ ʿĀʾisha (God be pleased with her) said, “The Prophet (pbuh) prohibited them from continuous fasting as a mercy for them. They said, ‘But you fast continuously?’ He said, ‘My form is not like yours. I spend the night with my Lord giving me food and drink.’”¹⁰⁵

The conclusion from all this is that the prohibition is due to a rational cause that is intended by the Lawgiver. If this is the case, then the prohibition is coterminous with the underlying cause. If the rational cause identified by the Messenger of Allāh (pbuh) is found, the prohibition is invoked and directed, but if it is not found, then the prohibition is absent. The reason is that the people in this case are divided into two groups:

The first type is for those for whom entering into the act causes excess hardship over and above the normal. This causes irregularity in this act or another act, which results in annoyance and weariness for him and a reluctance to actively undertake the act, as is the case with most of the subjects. For such subjects it is not necessary that they undertake acts that have such effects; rather, they should adopt exemptions in accordance with the method in which exemptions have been granted by the law (*sharīʿa*) – that is, where the act is such that it cannot be given up. They should give up the act where it can be given up, as this is the requirement of the underlying cause. The evidence for this is the words of the Prophet (pbuh), “The *qāḍī* is not to issue a ruling

when he is angry”,¹⁰⁶ and his words, “Your body has rights over you, and your wife has rights over you.”¹⁰⁷ It is also what was indicated by the Prophet (pbuh) when the information reached him that ‘Abd ‘Allāh ibn ‘Amr ibn al-‘Āṣ used to fast continuously. In his old age he said, “I wish I had adopted the exemption that the Messenger of Allāh (pbuh) offered me.”¹⁰⁸

The state of the second type is that they are not overcome by such weariness or laziness, due to an inhibition that is stronger than the hardship or is so acute that the difficulty becomes easy, or that there is so much love for the act that it gives them pleasure to perform it. This makes the act easy for them compared to others, thus converting such hardship into what is not hardship. In fact, the excessive performance of the act gives them greater concern, illumination and pleasure, or at least they are protected from the concern with the act as compared to others. As the tradition says, “Give us pleasure (though your call for prayer), O Bilāl.”¹⁰⁹ A tradition says, “Three things of your world are dear to me ...” and “The joy of my eyes is in prayer.”¹¹⁰ When he prayed for long and his feet used to become swollen or cramped, he said, “Should I not be a thankful servant?”¹¹¹ It was said to him, “Should we follow your directions whether you are calm or in a state of anger?” He said, “Yes.”¹¹² He said this when for us he said “The *qāḍī* is not to issue a ruling when he is angry.”¹¹³ Even though this is specific to him, the evidence (*dalīl*) is valid. A large number of traditions convey the meaning of continuing with acts in patience along with the likelihood of hardship occurring in them.

It should be enough for you to see what has come down from the Companions and from their Followers (God be pleased with them all), especially those who became well known for *‘ilm* (religious knowledge) and the transmission of tradition and who were followed in their *ijtihād*. These were like ‘Umar, ‘Uthmān, Abū Mūsā al-Ash‘arī, Sa‘īd ibn ‘Āmir and ‘Abd Allāh ibn al-Zubayr (God be pleased with them). Among the followers were ‘Āmir ibn ‘Abd Qays, Uways, Masrūq, Sa‘īd ibn al-Musayyab, al-Aswad ibn Yazīd, Rabī‘ ibn Khuthaym, ‘Urwa ibn al-Zubayr, Abū Bakr ibn ‘Abd al-Raḥmān, Mansūr ibn Zāzān, Yazīd ibn Harūn, Hushaym, Zirr ibn Ḥubaysh, Ubayy ‘Abd al-Raḥmān al-Salmā and others besides them whose list is long. They were all the followers of the *Sunna* and its notable protectors.

An example is what has come down from ‘Uthmān (God be pleased with him) that when he prayed *‘ishā’* (night prayer), he used to recite the whole Qur’ān in it.¹¹⁴ How many were there among them who used to offer the morning prayer with the ablution of the night prayer consistently for many years and who kept on fasting for so many years.¹¹⁵ It is also reported about Ibn ‘Umar and Ibn al-Zubayr (God be pleased with them) that they used to fast continuously, and it is said that Mālik permitted continuous fasting (*ṣiyām al-dahr*). Uways al-Qarnī used to commence prayer at night and continued until morning. He said: A report has reached me that there are certain servants of Allāh who remain in prostration forever.¹¹⁶ Similar reports have come down

about Ibn al-Zubayr too. It is reported about al-Aswad ibn Yazīd that he used to strive to the utmost in fasting and worship until his body became lean and pale. ‘Alqama said to him, “Fie on you, why do you punish this body?” He replied, “The matter is of immense importance, it is of immense importance.”¹¹⁷ It is related from Anas ibn Sīrin that the wife of Masrūq said, “He used to continue praying until his feet would swell”, and she used to sit behind him crying over what he was doing to himself.¹¹⁸ It is related from al-Sha‘bī, who said, “On a hot summer day when Masrūq was fasting he fainted, so his daughter said to him, ‘Break your fast.’ He replied, ‘What is it you intend for me?’ She said, ‘Compassion.’ He replied, ‘My daughter, I am also seeking compassion for a day whose length will be fifty thousand years.’”¹¹⁹

There are many other reports that have been transmitted about the early Muslims who adopted strenuous practices that can only be borne by those who have been prepared by Allāh for such tasks, and He readied these tasks for them, making them dear to them. In doing so they were not opposing the *Sunna*. In fact, they are counted among those who are ahead of the rest; Allāh has deemed them to be among those few. The reason is that the underlying cause (*‘illa*) for which such painful acts of worship were prohibited is missing for them; the prohibition is not invoked in their case. Thus, when the Prophet (pbuh) said, “The *qāḍī* is not to issue a ruling when he is angry”,¹²⁰ the rationale of the prohibition and its underlying reason is the mental pressure that fails to assess the proofs. The prohibition is coterminous with the mental pressure, and it is negated with its disappearance; therefore, it is negated even with a slight mental disturbance that does not create a mental pressure. This is sound and compatible.

The state in the first type is the state of the person who acts according to the contract with Islam and the tenets of faith without there being any excess (over this). The state in the second type is of one who acts under an overwhelming fear (of God), or hope or love. Fear is a driving rod, hope an alert guide and love an enthusiastic propellant. The one who fears acts despite hardship, accept that excessive hardship is borne through patience, which makes it easy even though it is extreme. The one who hopes also works despite the hardship, but he his not happy until his patience leads to complete weariness. The one who loves acts by striving enthusiastically for the beloved until his difficulty becomes easy and the distant becomes the near. He spends his strength thinking that he has not performed his due for the bond of love or been thankful enough for his blessings. He expends all his energy and still does not feel that he has attained his goal. The same applies to fear of bodily safety, reason or wealth, for it prevents the act resulting from it even if it lies within the power of a human. An exemption has been granted for such an act; it is binding for him so that no hardship is suffered by him, because it is disturbing for the body, as has preceded.

The question is whether the resulting act, and this state, where a person is afraid of bodily injury, loss of limb or reason, is to be rewarded. This is subject to examination for the discovery of the underlying reality through the principle laid down in the issue of “offering prayer in usurped land.” It is transmitted from Mālik and al-Shāfi‘ī that fast is not to be undertaken where bodily loss will be incurred, and that the person is not to be considered worthy of reward if he does fast. Moving from ablution with water to substitute ablution with clean soil is also transmitted, but in the case of illness and loss of property there is a possibility of this. The supporting evidence for this is the words of the Exalted, “Nor kill (nor destroy) yourselves: for verily Allāh hath been to you most merciful!”¹²¹ If the prohibition relates to these things and related matters due to fear, and not that worship is not to be undertaken, then the two matters are distinct. Inflicting severe hardship on the body makes the prohibition meaningful due to fear even when there is no prayer, while prayer is meaningful when it is devoid of hardship. Thus, it becomes a matter of two views.

Further, it is to be examined from the perspective of another principle, which is stated as follows: Is the intention of the Lawgiver in removing liability for this hardship due to the fact that it pertains to the right of Allāh, or is it due to the fact that it pertains to the right of the individual? If we say that it pertains to the right of Allāh, then the prohibition is directed towards what is pointed to by the intention of the Lawgiver, and He has removed hardship from religion. Thus, entering into an act that involves hardship amounts to going against such removal. If we say that it pertains to the right of the individual, then the act of the individual in seeking permission from his Lord for his good fortune makes his worship valid, and the prohibition is not applied properly to his worship. The points that make this second meaning preferable are several.

Among these is the point that the words of the Exalted, “Nor kill (or destroy) yourselves”,¹²² indirectly imply that this is by way of compassion for the servants, due to the words “For verily Allāh hath been to you most merciful!”¹²³ He has indicated that harm is removed from them, for He is merciful to them. Further, verses like “We sent thee not, but as a mercy for all creatures”¹²⁴ indicate that the *shari‘a* has been laid down for securing the interests of the servants.

Among them are also the preceding evidences about the removal of harm and the creation of facility. The prohibition is invoked on the assumption of harm and difficulty. When the removal of such harm is assumed for some people, the prohibition is removed. What is specific to our issue is the offering of prayers by the Prophet (pbuh) until his feet became swollen or they become full of sores. When worship is undertaken in this manner it definitely becomes extreme, but what is sour becomes sweet in worship for those who love, and their leader was the Prophet (pbuh). It is also reported about the some of the

ancestors that they used to cry so much that they lost their sight. It is related from al-Ḥasan ibn ‘Arafa, who said, “I saw Yazīd ibn Hārūn at Wāṣīt, and he was one with the best eyesight. Thereafter, I saw him when he had lost his sight in one eye, and then when he had lost it in both. I said to him, ‘O Abū Khālīd, what did you do to those sharp (beautiful) eyes?’ He said, ‘The late night crying has taken them away.’”¹²⁵

The evidence that has preceded in relation to the worthy ancestors about the imposition of absolute hardship supports this meaning. Consequently, a person who prefers the right of Allāh, the Exalted, in this is prohibited in the absolute sense. The one who prefers the view of the right of the individual is not prohibited in the absolute sense, and the matter is left to his choice.

Sub-Issue: Fear of Missing Performance

As for the second, the subject is required to perform legal (*shar‘ī*) acts and functions that are essential for him, and there is no escape for him from these. He undertakes these acts for his Lord, the Exalted. When he undertakes an act involving hardship, it may cut him off from other acts, especially those where the rights of others are involved. In such a case the worship or act he has undertaken cuts him off from what he is obligated by Allāh to perform. He falls short of the requirement and with this he becomes subject to blame without having an excuse. The intended requirement for him is to undertake all of them in a manner that no act is missed, but his circumstances do not permit him to do so.

Al-Bukhārī has related from Abū Juḥayfa, who said, “The Prophet (pbuh) established a bond of brotherhood between Salmān and Abū al-Dardā’. Salmān visited Abū al-Dardā’ and saw his wife in a shabby state (without the usual adornment of a wife), so he said to her, ‘How is it with you?’ She said, ‘Your brother has no need for this world. Abū al-Dardā’ then came, made food for him, and said, ‘Eat, for I am fasting.’ Salmān said, ‘I will not eat until you do.’ Then they ate (later). When it was night Abū al-Dardā’ got up to pray, but Salmān asked him to sleep, so he slept. After some time, he arose again for prayers, but Salmān asked him to sleep and he slept. When it was the later part of the night, Salmān said, ‘Arise now’, and after this they prayed. Salmān then said to him, ‘Your Lord has a right over you, your own body has a right over you, your wife has a right over you, so give the right where it is due.’ After this they went to see the Prophet (pbuh) and Abū al-Dardā’ mentioned this to him, and he said, ‘Salmān has spoken in truth.’”¹²⁶

Then there are the words of the Prophet (pbuh) spoken to Mu‘adh (God be pleased with him), “Are you one who inflicts trials on people?” He said this three times. “I wish you had recited sūrahs like ‘The Most High (Al-A‘la)’,¹²⁷ ‘The Sun (Ash-Shams)’¹²⁸ and ‘The Night (Al-Layl)’,¹²⁹ for the old, weak and those with needs pray behind you.” The person complaining was one

who was taking water-bearing camels. It was night and when he saw Muʿadh leading the prayers. He left his camels and came to join Muʿadh. Muʿadh recited Sūrat al-Baqara and al-Nisāʾ, so the man left. See the whole tradition in al-Bukhārī.¹³⁰ A similar tradition is, “When I hear a child crying, I shorten my prayer.”¹³¹ It is related from Muḥammad ibn Ṣāliḥ that he entered the places of worship and congregation of those who had devoted themselves to worship when he saw a man crying loudly because he had missed the morning prayer with the congregation as his prayer during the night was prolonged.¹³²

Further, occupation with certain acts renders the worshipper unable to participate in acts like these and other important things when he is wealthy enough to participate in it. It is to indicate this that it is related in a tradition about Dāwūd (David, pbuh) that he used to fast one day and miss it the next day; thus, he did not run away at the time of battle. It was said to Ibn Masʿūd (God be pleased with him), “You do not fast too much?” He replied, “Fasting pulls me away from the recitation of the Qurʾān, and the recitation of the Qurʾān is dearer to me than fasting.”¹³³ A similar report is from ʿIyād about Ibn Wahb, who had made a vow not to fast ever at ʿArafa, because he was at the station once in a state of fasting when it became very difficult for him due to the heat. He said, “The people were awaiting mercy when I was waiting for the time of breaking the fast.”¹³⁴

Mālik (God bless him) completely disapproved of prayers throughout the night.¹³⁵ He said, “Perhaps, the person will reach morning in a state of drowsiness, and we have the model of the Prophet (pbuh) in front of us.” He then said, “There is no harm in it as long as the morning prayer is not affected, but if the dawn arrives and he keeps on sleeping then he is not to do it. If, however, he is just feeling slack and lazy then there is no harm.”

When it has become obvious that there is a prohibition about being completely immersed in acts of worship, as they result in the suspension of other functions or cause laziness leading to the relinquishment of worship due to hate developed for such acts, then where this underlying cause is found or expected, the prohibition is invoked. If none of these results occur, then occupation with such acts is good along with the performance of other functions, irrespective of the occupation being based on the three states described earlier of overwhelming fear, hope or love.

Suppose it is said that even though the urging factor for a person’s undertaking an act of worship and being immersed in it is fear, guiding hope or supporting love, it is not possible for him to perform all the acts of worship. Thus, he cannot pray throughout the night, fast during the day, cohabit with his wife and so on. He cannot fast continuously and with it seek a livelihood and subsistence for his family, or undertake *jihād* in its complete form. He cannot continue to pray continuously and yet be able to help people, respond to the demands of oppressed, meet the needs of people or perform other such

acts. In fact, many of these acts conflict with other acts so that it is not possible to bring them together. At times there is no conflict, but they do affect others negatively. This clash of rights for the subject is known to him and is not unknown; how then is it possible to undertake all the acts or most of them when the situation is like this? A tradition, therefore, says, "If someone goes to the extreme in this religion, it will overwhelm him."¹³⁶ Further, if all this is conceded in the case of those who have attained advanced spiritual states and those who have cut themselves off for spiritual advancement, then how can this be reconciled with the affirmation of such rights, striving for them and seeking them out?

The response is that people, as stated earlier, are of two types:

First: those in advanced spiritual states. It is necessary even for them to attain their spiritual rewards permitted to them by the *shari'a*, but in a manner that does not disrupt the obligations imposed upon them nor affect their spiritual rewards. Thus, we found the absence of exemptions for such persons even where exemptions were due, for fear they would lead to the invoking of injury or injuries that are most likely to occur under the *shari'a*. Cutting oneself off from permissible practices sometimes leads to the commission of prohibited acts. Likewise, we saw that pursuing spiritual rewards in the absolute sense can take one out from the ambit of being a servant, because the person in pursuit of constant rewards without any restriction is casting off the wisdom of the *shari'a* from his person. This is profound irregularity. The laws came down to eliminate such uncontrolled pursuit, just as whatever is in the heavens and on earth is controlled for the sake of human beings.¹³⁷

The truth is what has been laid down by the *shari'a*, which is the reconciliation of these two extremes under the monitoring of a balance. He may, therefore, seek spiritual rewards as long as an obligation is not disrupted, and he is to give up the spiritual rewards as long as the relinquishment does not lead to a prohibition. The recommended act and the disapproved of remain within a balance too. Thus, he is urged to undertake the recommended act in which there is a reward for him, like marriage, for example, or he is forbidden from an act not approved of in which there is no worldly reward, like prayer during the prohibited timings. He is to examine the recommended act in which there is no reward along with the disapproved of act in which there is a benefit for him; I mean a worldly benefit. If the relinquishment of a reward in a recommended act¹³⁸ leads to what is disapproved of by the *shari'a*, or to the giving up of a recommended act for one that brings greater reward, the acceptance of the reward and the relinquishment of the recommended act is better. For example, the giving up cohabitation with one's wife leads to the giving of attention to women who are strangers, as is indicated by a tradition, "When one of you sees a woman whom he fancies ..."¹³⁹ The same is the case with the relinquishment of fasting¹⁴⁰ on the Day of 'Arafa, or for the reason that the recitation of the Qur'ān is strengthened thereby. It is stated in a

tradition, “You are about to confront the enemy so giving up fasting will give you more strength.”¹⁴¹

In the same way if the relinquishment of a disapproved act, in which there was a personal gain for him, leads to what carries greater disapproval, then the lighter of the two is to be given preference. This is similar to what al-Ghazālī has said: It is essential that obedience to parents be given predominance in the consumption of things of dubious legality by abstaining from them when in doing so there is disobedience of parents. In the consumption of such suspicious things there may be a benefit for a person, but when there is suspicion about them abstention is required and their consumption is disapproved of on account of the suspicion. If the consent of the parents is found in their consumption, the benefit in them is to be given preference on account of what is far greater in terms of disapproval, which is opposition of parents. Something similar to this is what is related from Mālik (God bless him) that the seeking of sustenance through (legally) doubtful means is better than dependence upon people.¹⁴²

The conclusion from this is that if the rewards of those who have attained spiritual states clash with other acts, then a process of preference is to be undertaken. If an act is preferred it is to be performed and the remaining acts are to be relinquished. This concept is the basis of the statements of the jurists in the issues of *fiqh*.

Second: those who suspend the rewards. The rule for them is the rule for the first type in undertaking preference between acts, except that the suspension of their rewards is due to their personal disinclination towards the rewards that keeps the fear away from them, which would lead them to seclusion and contempt for the usual acts. They have been given success in making a choice between rights, and they have been spurred into action to what others have not been able to do. They have been able to perform greater acts and provide a service that has a wider scope. They have been enabled to perform religious functions that are related to the heart and the senses, which have been deemed important by others who count them as miraculous. As for the possibility of their performing all the acts that have been made obligatory for the servant or recommended to him as a whole, it is difficult, except in the case of the things prohibited, for these have to be relinquished without exception. The negation of acts is not the commission of acts, and a general negation can possibly be attained as compared to general affirmation. When their rewards become suspended, they are in a state where their acts do not clash, except to the extent of the command in the words of the Prophet (pbuh), “Your body has a right over you.”¹⁴³ His own right in so far as it is a right that is weak or waived in his view makes another right stronger than his personal reward. Thus, his reward is the last of the entitlements. When the rewards are waived, those that are their substitutes become attached, because the time of demanding rewards does not remain empty. This leads to the

entry of many acts, and when he acts for his reward in accordance with the command, it amounts to an act of worship as will be coming up. It becomes an act of worship after it was a normal practice. The reward is waived from his side, but is established from the perspective of the command, as in the case of all acts of obedience. It is from this perspective that the person who waives his reward becomes one who performs the utmost worship; rather he is one who is the foremost in the undertaking of obligations. This is a vast subject whose time of discussion is not here.

Sub-Issue: Unintended Hardship

What has been mentioned so far relates to acts from which hardship arises, and these are acts that are permitted. When the acts are not those that are permitted, and they result in extreme hardship, then they have a higher priority for purposes of prohibition due to this cause. The reason is that a greater excess in terms of prohibition has been committed leading to grief and hardship for the actor.

The exception is that sometimes there is a cause that is a matter of hardship for the subject, but the intention of the Lawgiver is not to involve him in hardship. The intention of the Lawgiver is that interests be secured or injuries be repelled, such as retaliation (*qiṣāṣ*) and penalties arising from prohibited acts. These are meant to act as deterrents for the subject to prevent him from undertaking acts like these. They are also meant as a warning for others that they should abstain from such acts. The fact that the recompense is painful and injurious is similar to the pain and harm that result from the amputation of an infected hand or the taking of sour medicine. Just as one cannot say about the physician that he intends pain through such acts, it cannot be said about the Lawgiver, for he is the Greatest Physician.

The preceding evidences indicating that Allāh has not introduced hardship in this religion nor does He intend doing so are similar to the tradition from the Prophet (pbuh) that Allāh says, “In all things that I do my reluctance in taking away the life of my believing servant is more than anything else. He dislikes death and I do not like his dislike, but death is essential.”¹⁴⁴ The reason is that death is a matter that is certain for the believer and is a means for reaching his Lord, to enjoy nearness to Him in the ultimate abode. In such a case His intention to cause death is acknowledged, and from the perspective of dislike (by the human) it becomes disapproved of.¹⁴⁵

This meaning may at times be found in vows that create hardship for humans when they have to fulfil them. When the subject finds enjoyment in the requirements of a vow, the creation of the obligation becomes disapproved of. When the vows are concluded, it becomes obligatory to satisfy them in so far as they are acts of worship even though there is hardship in them,

just as penalties become obligatory based upon the consequences. Even when the vows are about things that are not acts of worship or they are about acts of worship that are impossible to perform and for which exemptions are prescribed, or when they are about things that clash with things that pertain to necessities or needs in religion, then such vows stand nullified. An example is one in which the subject makes a vow to give his entire wealth to charity; in such a case, his vow is valid up to one-third of his wealth. Again, he may vow to walk up to Mecca, but is unable to do so and takes a ride and makes a sacrifice in lieu thereof, or where he makes a vow that he will not marry or will not eat such and such food, then such vows are void as a rule. Other examples may be mentioned. Notice here how compassion accompanies the law where the subject undertakes acts that place him under hardship. On account of all this, the rule that the Lawgiver does not intend hardship for the subject is general for all things commanded or prohibited.

It is not to be said that when the Qurʾān says, “If then any one transgresses against you, transgress ye likewise against him”¹⁴⁶ – where recompense has been called transgression – it requires that an intention of transgression be formed. The implication is the hardship that is invoked for one subjected to transgression.

The reason is that we will say in response: naming recompense that is consequential upon transgression as transgression is a figurative use of the term as is well known in the usage of the Arabs. There are many such instances¹⁴⁷ in the *sharīʿa*, as in the words of the Exalted, “It is Allāh who jokes with them”,¹⁴⁸ “And (the unbelievers) plotted and planned, and Allāh too planned, and the best of planners is Allāh”¹⁴⁹ and “As for them, they are but plotting a scheme, and I am planning a scheme.”¹⁵⁰ There are many other examples, but there is no objection to such usage.

Sub-Issue: Hardship Arising from External Factors

The hardship affecting the subject may sometimes come from external factors. It may not be due to the subject or due to his undertaking the act from which it can arise. In this case, the Lawgiver has no intention to continue with the pain, the hardship and bearing it in patience. Likewise, the Lawgiver has no intention to cause the hardship so that it affects a person; however, He has created adverse and painful things for testing the servants and to purify them. He has imposed them on the subject as He likes and how He likes, “He cannot be questioned for His acts, but they will be questioned (for theirs).”¹⁵¹ It is understood from the *sharīʿa* in its entirety that there is unqualified permission to ward off pain so that the resulting hardship is removed and also to preserve benefits that have been permitted to people. In fact, they have been permitted, for fulfilling the objectives of the servant, to take precautions against expected hardship even though it does not actually occur. This is permitted for the

creation of facility for the subject and to preserve his sincere devotion towards Him so that he can thank the Benefactor.

Among such permissions is the permission for warding off pain, hunger, thirst, extreme heat and cold, and to seek medicine when illness befalls him. It also includes prevention against all harmful things affecting man or other beings and to take measures to prepare against what is expected. The same applies to all things on which life in this world depends through the repelling of harms and the securing of interests. Alongside these are arranged the repelling of pains and the securing of interests that pertain to the next world by observing the obligations arising from the rules of the *shari'a*. In the same way, all these are arranged alongside those harms that result from his acts. The fact that there is permission for such harms to be repelled is known in the *din* (religion) by necessity.

If this permitted warding off is established with a certainty, then there is no confusion in our understanding that the Lawgiver has intended the repelling of such hardship, just as He has made it obligatory for us to repel warriors, those who are striving to create corruption for Islam and the Muslims, and to wage war against the unbelievers who intend to demolish Islam and those who profess it. In this context, the fact that they will be overcome and subjected to trials is not acknowledged, because we have understood from the obligation of repelling harm that such a consideration is expunged from obligation, even though it is acknowledged for purposes of the contract of faith. It is also not acknowledged for obligation *ab initio*, even though in essence it is a trial, as it is a matter of obedience and defiance on the part of the subject, who is a creature of the Lord. An act or omission on his part is, therefore, in accordance with what Allāh has created in the subject. Facility is essentially a device for submission to the rules of the decree and predetermination; so also in this case.

If, however, such permission is not established with a certainty, then the possibilities of being overcome and forced into trials are acknowledged along with the fact that these are sent by One who overcomes and thrusts them into trials because of which the servant submits to the decree. It is for this reason that when medicine was no longer effective, the worthy ancestors relinquished it and the Prophet (pbuh) used to permit them to patiently bear the illness. This is illustrated through the tradition about Sawdā', the insane woman, who asked the Prophet (pbuh) to pray for her. He gave her a choice between the removal of the illness and staying as she was for the sake of greater reward. As the tradition says, "Those who do not resist ... place their trust in their Lord."¹⁵²

It is possible to consider the aspect of benefit according to the implication of the permission and to support it with a recommendation, as in the case of medicine when the Prophet (pbuh) said, "See medicinal cure, for the One who has sent down the illness has also sent down the cure."¹⁵³

Here the discussion of the third type, pertaining to the comprehension of hardship from the unqualified meaning of the term, comes to an end.¹⁵⁴ What now remains is the discussion of the fourth type, which is the hardship involved in opposing one's desire. The discussion is as follows (eighth issue).

The Eighth Issue: The Aim of the *Shari'ah* in Releasing the Subject from the Control of his Whims

Opposition to what the self desires invokes hardship for the subject and it is difficult for him to move out of the dictates of the self. It is for this reason that those who pursue their whims have gone to extremes that are not seen in others. The state of those who love their whims is sufficient as a witness against them as was the state of those polytheists to whom the Messenger of Allāh (pbuh) was sent, along with the People of the Book as well as those who were adamant about what they believed. They went to the extent that they were willing to destroy life and property, but would not oppose their own whims. Consequently, Allāh the Exalted said, "Then seest thou such a one as takes as his god his own vain desire? Allāh has, knowing (him as such), left him astray, and sealed his hearing and his heart (and understanding), and put a cover on his sight",¹⁵⁵ "They follow nothing but conjecture and what the souls desire"¹⁵⁶ and "Is then one who is on a clear path from his Lord, no better than one to whom the evil of his conduct seems pleasing, and such as follow their own lusts?"¹⁵⁷— as well as other texts.

The Lawgiver, by laying down the *shari'ah*, intends to take the subject out of the pursuit of his own fancy, so that he can be the servant of Allāh. Accordingly, the opposition of desires is not an acknowledged hardship in the context of obligation, even though it does amount to hardship in ordinary practice. Had it been considered hardship, leniency would have been prescribed for it due to such hardship. This, however, goes against what the *shari'ah* has been laid down for, and it is a nullity. Thus, what leads to it is also void. The elaboration of this concept is mentioned in what follows, God willing.

The Ninth Issue: Goals of the Here and the Hereafter

Just as hardship pertains to this world, it does to the Hereafter. When the commission of acts leads to the suspension of an obligation of the commission of something prohibited, it amounts to a greater hardship in the eyes of the *shari'ah* as compared to a worldly hardship that does not disrupt the *din*. *Din* is given a higher priority over life and other matters in the eyes of the *shari'ah*, and it is the same in this case. When this is the case, it is not the intention of the Lawgiver to impose hardship from this perspective. The evidences under which this concept is classified have preceded to an extent that is sufficient.

The Tenth Issue: General and Specific Hardship

Hardship sometimes arises from an obligation and is specific to the individual alone, as in the case of the preceding issues, and sometimes it is general affecting the individual and others besides him. On occasions, the hardship affects another due to what is caused by the subject.

The example of general hardship is in the case of the ruler on whom all depend for he is self-sufficient in those matters in which reliance is placed on him, unless he is absorbed in authority to the extent that it cuts him off from the worship of Allāh, familiarity and private communication with Him. If he does not undertake this, the resulting corruption and harm will be general. The harm that affects others will also affect him.

The hardship faced by others alone is illustrated by the case of the *qāḍī* and scholar to whom people turn for their needs. Undertaking the issuance of rulings and judgements, however, may drive them to what is not permitted or to occupy them away from worldly and religious duties. If they do not undertake such acts, a general harm comes to affect people other than them. Here, seeking their own interests that are permitted to them and those that are required from them can give rise to general disruption.

In any case, hardship, in so far as it is not intended by the Lawgiver, is undesirable, nor is the act that leads to it desirable, as in the preceding explanation. Here a conflict between two types of hardship will arise that needs to be examined. If hardship for others necessarily follows from a subject's exclusive occupation with his own affairs, it also follows for his person when he is constantly occupied with the affairs of others. When this is the case, there is a need to examine whether the two kinds of interest can be reconciled along with the negation of the two hardships wherever that is possible. If that is not possible, then preference must be exercised. If the general hardship is greater, it is to be given importance and the specific hardship is to be ignored. If it is the opposite then the other is to be preferred. If the manner of preference is not obvious, then judgement is to be suspended, as will be coming up in the *Book of Conflict and Preference*,¹⁵⁸ God willing.

The Eleventh Issue: Normal Hardship

The hardship that may occur for a subject in meeting an obligation may far exceed the hardship that occurs in ordinary acts, and this may result in irregularity that pertains to this world and the next. The intention of the Lawgiver in such a case is the removal of the hardship in absolute terms. It is this that is indicated by the preceding evidences, and for this purpose exemptions have been ordained for them in absolute terms.

Suppose, however, the hardship is not beyond the ordinary, and this is the hardship that occurs in ordinary acts. In this case, even though the Lawgiver does not intend such hardship, He does not intend the removal of such

hardship. The evidence for this is that if He had intended the removal of such hardship, the obligation would not remain along with it. The reason is that each ordinary act or other-than-ordinary (act) necessarily gives rise to some effort and burden proportionately, whether this is less or more. This is either in the act itself that is the subject matter of the obligation or due to the withdrawal of the subject from what he was already occupied with in order to take up the obligatory act, and sometimes it is due to both at the same time. If the *shari'a* intends the lifting of such a burden it would amount to a requirement of removing the very act that is the subject matter of the obligation. This is not valid; therefore, what was implied is not valid either.

There is, however, a point that needs to be examined, which is that the burden and hardship involved in ordinary acts differs in accordance with such acts. The hardship involved in the two *rak'as* of *fajr* (dawn) is not like the two *rak'as* of the morning; nor is the hardship involved in prayer similar to the hardship in fasting; nor again the hardship involved in fasting like the hardship in pilgrimage; and the hardship involved in pilgrimage is not like that of *jihad* – and so on with other acts invoking obligation. Yet each ordinary act in itself carries with it some hardship that is in the same proportion as the hardship of other ordinary acts. Thus, it does not go beyond the ordinary on the whole.

Further, the hardship involved in ordinary acts is not of the same measure of intensity at all times, at all places and under all circumstances. Thus, the performance of ablution in extreme cold is not like its performance in hot weather, nor does ablution with water available without effort carry the same burden as drawing it out with hardship or bringing it over from a distant well. Likewise the offering of prayer during the late hours of the night during extreme cold is not like its performance in different circumstances. This point is indicated by the Qur'ān in the words of the Exalted, “Then there are among men such as say, ‘We believe in Allāh’; but when they suffer affliction in (the cause of) Allāh, they treat men’s oppression as if it were the wrath of Allāh. And if help comes (to thee) from thy Lord, they are sure to say, ‘We have (always) been with you!’ Does not Allāh know best all that is in the hearts of all creation?” This was stated after the words, “Do men think that they will be left alone on saying, ‘We believe’, and that they will not be tested? We did test those before them, and Allāh will certainly know those who are true from those who are false.”¹⁵⁹ He then said, “Behold! They came on you from above you and from below you, and behold, the eyes swerved and the hearts gaped up to the throats, and ye imagined various (vain) thoughts about Allāh!”¹⁶⁰ Allāh then praised those who had been patient and true to their covenant: “Among the believers are men who have been true to their covenant with Allāh: of them some have died, and some (still) wait: but they have never changed (their determination) in the least.”¹⁶¹

There is then the story of Ka'b ibn Mālik and his two Companions (God be pleased with them) when they stayed behind during the Battle of Tabūk,

so the Messenger of Allāh forbade communication¹⁶² with them and there was expectation of revelation about them: “(He turned in mercy also) to the three who were left behind; (they felt guilty) to such a degree that the earth seemed constrained to them for all its spaciousness, and their (very) souls seemed straitened to them – and they perceived that there is no fleeing from Allāh (and no refuge) but to Himself. Then He turned to them, that they might repent: for Allāh is Oft-Returning, Most Merciful.”¹⁶³ The same applies to what was revealed about marriage with slave girls out of fear of falling into sin.¹⁶⁴ He said, “But it is better for you that ye practise self-restraint.”¹⁶⁵

There are other similar texts too indicating that the hardship in certain ordinary acts reaches a level when it is thought to be beyond the normal. In fact, in reality it is usual and such hardship is usually faced because hardship in any act has two extremes and a link. There is one that is at the higher extreme, so that if the act is prolonged the hardship moves out of the ordinary, but as such it does not move out of the ordinary. Then there is the lower extreme, which if reduced will not only be counted as hardship that can be assigned to the act. The link usually and invariably exists (with extreme hardship). Accordingly, hardship that, on the face of it, appears to be extraordinary and beyond the normal is not so for one who understands the nature of human practices. If the hardship does not go beyond the ordinary, the Lawgiver has no intention for its removal, as is the case for all the other ordinary forms of hardship in acts of the usual practice.

Consequently, there is no exemption (*rukḥṣa*) for such hardship. The matter can result in confusion and, therefore, becomes the subject of disagreement.¹⁶⁶ Thus, Allāh the Exalted has said, “Go ye forth, (whether equipped) lightly or heavily, and strive and struggle, with your goods and your persons, in the Cause of Allāh. That is best for you, if ye (but) knew.”¹⁶⁷ He then said, “Unless ye go forth, He will punish you with a grievous penalty, and put others in your place.”¹⁶⁸ This was a case of strict imposition as it implied that there was essentially no exemption of staying back, except that in terms of the evidences that imply exemptions from hardship this would be deemed a case of excessive burden in ordinary acts that can raise alarms and become extraordinary. In the Battle of Tabūk, two matters were important: extreme heat and severe hardship that involved leaving the shade; and leaving ripe crops and fruits unharvested. All this was an obvious excess over the hardship of battle, but it was not beyond the ordinary hardship in such matters. It was for this reason that no exemption was invoked by this hardship. The same applies to all similar matters. Allāh the Exalted has said, “And We shall try you until We test those among you who strive their utmost and persevere in patience; and We shall try your reported (mettle).”¹⁶⁹ Ibn ‘Abbās (God be pleased with him) is reported to have said about the words of the Exalted, “And strive in His cause as ye ought to strive (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on

you in religion”, that this is the space granted by Islam for repentance and expiation. ʿIkrama (God be pleased with him) said that this leniency is reflected in the fact that Allāh has permitted you to have two, three, or four wives.¹⁷⁰ It is reported from ʿUbayd ibn ʿUmayr that a group of people about whom this was revealed came to him and asked him about the word *ḥaraj*.¹⁷¹ He said, “Are you not Arabs?” They asked him three times and he gave the same response. He then asked them to bring him someone from the tribe of Ḥudhayl. When he came he said to him, “What does *ḥaraj* mean among your people?” The man said, “*Ḥaraj* is a dispute that has no solution.” Ibn ʿAbbās said, “This too is a *ḥaraj* from which there is no escape.”¹⁷² Notice how he elaborated the meaning of *ḥaraj* as something for which there is no excuse. He elaborated it through the ordaining of repentance and expiation. The original meaning of *ḥaraj* is constriction. Thus, the pressure felt in the usual cases of hardship in ordinary acts is similar to it, and it is not harm in the literal or the legal meaning. It is to be noted that this type of constriction has been ordained due to the underlying wisdom of the *shariʿa*, which is trial and testing so that it becomes apparently visible to one observing when it is known to Allāh as part of the Unknown.¹⁷³ The *ḥaraj* that is intended to be removed now stands elaborated along with constriction that is not intended to be removed. Praise be to Allāh.

Sub-Issue: General and Specific Injury

Ibn al-ʿArabī said, “If the injury is in a case of general implication affecting the people then it is to be removed, but if it is specific it is not to be acknowledged, in our view. According to some principles of al-Shāfiʿī, it is taken into account.”¹⁷⁴ Here the quotation ends. This is what needs to be examined. If he means by specific harm what lies in the highest extremity of harm then the rule is as he has stated, and there is no need of disagreement. The reason is that when it is an ordinary act then it has been established that in an ordinary act it cannot be removed, otherwise it would apply to all kinds of burdens (obligations). If a disagreement is contemplated, then it is based on the fact that such harm arises either in normal circumstances or what is beyond the ordinary, and not that it is disputed along with the agreement that it is in one of these.

Further, calling it specific makes it contestable, because it is general from all aspects and not specific, for it is not confined to some determined subjects to the exclusion of others. If by *ḥaraj* (harm) is meant what is beyond the usual, and which belongs to the category in which exemption and facility occurs, then generality and specificity make it difficult to understand. Journey, for example, is a cause of *ḥaraj* in the completion of prayer and fasting; therefore, leniency has been laid down for it. This is general. Leniency has been prescribed for illness, but it is not general in the meaning that ease is not provided for every type of illness. There may be sick persons who cannot perform prayer

while standing or sitting, while there may be those who can do so. Among them might be those who are able to fast as well as those who cannot. This is specific to each of the subjects for his own case. Despite all this, leniency has been prescribed in this as a whole. It is something in which al-Shāfiʿī does not oppose Mālik, except that they deemed it general harm when illness is qualified as one that invokes unusual harm. In such a case, it reverts to the general category. Mālik does not differ with al-Shāfiʿī in this either.

At this stage it becomes difficult to provide an illustration of the specific, for there is no harm with which leniency is associated legally, whether by agreement or disagreement, that cannot be counted as general, even though there is agreement that in its existing forms it affects only a single individual. Even though it were possible to lay down the law for a specific individual or for a certain group of people, it cannot be conceived in the *shariʿa*, except what was made exclusive for the Prophet (pbuh) or when one of the Companions (God be pleased with them) was chosen for a rule, like the sacrifice by Abū Barda of the *jadhʿa*¹⁷⁵ or the testimony by Khuzayma.¹⁷⁶ This was specific to the time of prophethood and not for later times.

Suppose it is said that perhaps he (Ibn al-ʿArabī) means by specific and general what is general for all the people, and what is specific to certain areas, or certain times, or some people, and the like, then the response will be:

This is also something that is subject to examination. Harm with respect to a class or type is general within that universal (*kullī*) and is not specific. The reality of the specific is that in which the harm is specific to some determined individuals, or is specific to some time period, or some identified places. All this can be conceived for the period of prophethood alone, or in a manner that cannot be the basis of further analogy, like the prohibition of storing sacrificial meat during the period of the arrival of the gypsies, or like turning towards the Kaʿba, or preferring the three mosques over other mosques. Conceiving this kind of specificity in the issue raised by Ibn al-ʿArabī makes it easy to understand.

Suppose it is said that there is specificity in a class or type in so far as it is a class or type that falls within a genus that includes them and other classes, then it will be said:

In this too there is generality in so far as it includes a number that is unlimited. Specificity in one of the two aspects is not prior to the other aspect, which is generality. In fact, the aspect of generality is prior as the harm in it amounts to a universal as its linking with another class or type will assign it the same rule. The relationship of this class or type with all the remaining classes and types that fall within a single genus is like the relationship of some individuals of this genus, in the association of illness or journey, with all the other individuals. If the rule is established in one it is established for the other, and if it is set aside for one it is set aside for the other. This is agreed upon between the two Imāms. It is essential that our issue be settled in the same way.

It may be said that perhaps he means, for example, the change (matter) affecting water that cannot usually be separated from it, which is general like mud, or moss or other such matter, or it is specific like separation specific to some kinds of water; then the first rule is set aside due to its generality, while the second is disputed due to its specificity. The same disagreement may exist about sea water as to whether it is pure. It is like the change occurring due to decaying leaves, a specific case, about which there is a disagreement. It is also like divorce prior to marriage – that is, if it is general it is set aside. If it is specific then there is disagreement about it. It is as if he said: Each woman that I marry from such and such tribe, such and such land, from the Sudan, the white people, any virgin, deflowered woman, or whatever is similar to these, then she stands divorced. Similar to this is his saying: Any slave girl that I buy is set free. It is, however, specific with respect to the intention of having intercourse. It is also like his saying: Every free-woman that I marry is divorced. From the perspective of unqualified ownership this is general, and is set aside. If he says, “Each slave-girl that I buy from the Sudan ...”, then this is specific and disagreement abides in it. This applies to other similar issues.

The response is that this is possible and it is the closest we come to the meaning of his statement, except that the statement of disagreement in these matters and other similar things – from Mālik about not considering them and from al-Shāfiʿī about not considering them – must be verified from the perspective of the discipline of *fiqh* and not from the perspective of the discipline of *uṣūl al-fiqh*. If the disagreement is established, however, then it is the intended meaning here, and examination from the perspective of *uṣūl* conveys what he has said.

General harm is one in which human beings have no power for its removal, as in the preceding examples. If removal is possible, then it is not general in absolute terms, except that its removal may be from another harm even though it is lighter, because without hardship removal is not possible due to the differences among human beings in this respect.

Further, just as there is no removal without hardship, likewise there is no removal even with its existence. From this perspective, there are two views. The issue, therefore, has two sides and a relationship. The general side that cannot be removed in current practice and placed opposite this the specific side in which removal is possible without harm, as in the case of the altered state of water with vinegar, saffron and the like. There is also a relationship between the two sides, which is subject to examination and *ijtihād*. Allāh knows best.

The Twelfth Issue: The Aims of the *Shariʿa* in Creating Obligations

The *shariʿa* imposes obligations in accordance with its method of a middle path of maintaining a balance. It draws upon both sides with equality, without inclination (towards one side), imposing obligations that are within the ability of

the subject without inflicting hardship or relaxation. In fact, these obligations apply in a proportion that requires for all the subjects the maintenance of an ultimate balance, like the obligations of prayer, pilgrimage, *jihād*, *zakāt* and others that have been applied initially without an apparent cause requiring this balance, or due to a cause that relates to a lack of knowledge about the method of performance. This is reflected in the words of the Exalted, “They ask thee what they should spend (in charity)”¹⁷⁷ and “They ask thee concerning wine and gambling.”¹⁷⁸

If the legislation is laid down due to the departure of the subject, or the likelihood of his departure, from the middle path towards one side, then the legislation returns him to the middle balanced path, but in a way that inclines towards the other side so as to achieve a balance. It is like the act of a compassionate physician who carries the patient forward according to what is good for him in his state and circumstances, and according to the intensity and mildness of the illness, until his health is restored and he is prepared for adopting suitable measures that will keep him on the middle path in all his states.

Have you not noticed that Allāh the Exalted has addressed the people at the initial imposition of obligations through a communication that identifies for them the blessings that He has given them from among the good things. He recounts the interests that He has proclaimed on their account for the securing of their benefits and facilities with which their life is maintained and their transactions are carried forward to completion. He says, “Who has made the earth your couch, and the heavens your canopy; and sent down rain from the heavens; and brought forth therewith fruits for your sustenance; then set not up rivals unto Allāh when ye know (the truth)”¹⁷⁹ “It is Allāh Who hath created the heavens and the earth and sendeth down rain from the skies, and with it bringeth out fruits wherewith to feed you; it is He Who hath made the ships subject to you, that they may sail through the sea by His command; and the rivers (also) hath He made subject to you. And He hath made subject to you the sun and the moon, both diligently pursuing their courses; and the night and the day hath He (also) made subject to you. And He giveth you of all that ye ask for. But if ye count the favours of Allāh, never will ye be able to number them. Verily, man is given up to injustice and ingratitude”¹⁸⁰ and “It is He Who sends down rain from the sky: from it ye drink, and out of it (grows) the vegetation on which ye feed your cattle.”¹⁸¹

To these were added further blessings. Thereafter, they were promised that they would be granted these blessings if they believed, and that they would be given punishments if they persisted with their unbelief. When they opposed this and confronted the offer of blessings with unbelief, doubting the veracity of what was said to them, definitive arguments were provided about the truth and validity of what was said to them. As they did not pay attention to these due to their inclination towards the benefits of the present world, they

were informed about the reality of this world to the effect that it was in essence nothing as it was about to go away and perish. Pictures were drawn for them about this reality, as in the words of the Exalted, “The likeness of the life of the present is as the rain which We send down from the skies: by its mingling arises the produce of the earth that provides food for men and animals; (it grows) until the earth is clad with its golden ornaments and is decked out (in beauty); the people to whom it belongs think they have all powers of disposal over it; there reaches it Our command by night or by day, and We make it like a harvest clean-mown, as if it had not flourished only the day before! Thus do We explain the Signs in detail for those who reflect”,¹⁸² “Know ye (all), that the life of this world is but play and pastime, adornment and mutual boasting and multiplying (in rivalry) among yourselves, riches and children. Here is a similitude: how rain and the growth that it brings forth delight (the hearts of) the tillers; soon it withers; thou wilt see it grow yellow; then it becomes dry and crumbles away. But in the Hereafter is a chastisement severe (for the devotees of wrong). And Forgiveness from Allāh and (His) Good Pleasure (for the devotees of Allāh). And what is the life of this world, but goods and chattels of deception?”¹⁸³ and “What is the life of this world but amusement and play? But verily the Home in the Hereafter – that is life indeed, if they but knew.”¹⁸⁴

In fact, when people believed and the desire for this world appeared through the conduct of some of them, a desire that indicated an inclination away from mean path, or the likelihood of such conduct,¹⁸⁵ the Prophet (pbuh) said to them, “What I fear for you is that the pleasures of this world will be laid bare for you.”¹⁸⁶ When such conduct was not apparent, nor the likelihood of such conduct, Allāh the Exalted said, “Say: Who hath forbidden the beautiful (gifts) of Allāh, which He hath produced for His servants, and the things, clean and pure (which He hath provided), for sustenance? Say: They are, in the life of this world, for those who believe, (and) purely for them on the Day of Judgement. Thus do We explain the Signs in detail for those who know”¹⁸⁷ and “O ye messengers! Enjoy (all) things good and pure, and work righteousness: for I am well-acquainted with (all) that ye do.”¹⁸⁸

A prohibition of injustice was laid down for the People of Islam, with a warning and severity. The Exalted said, “It is those who believe – and mix not their beliefs with injustice – who are (truly) in security, for they are on (right) guidance.”¹⁸⁹ When the Prophet (pbuh) said, “The signs of a hypocrite are three: when he speaks he lies; when he promises he turns back on it; and when he is trusted he betrays the trust”,¹⁹⁰ they felt insecure for there is no one who protected against any of these things, so he elaborated it informing them that lying and breach of trust were specific to the unbelievers. Likewise, when the verse, “Whether ye show what is in your minds or conceal it, Allāh calleth you to account for it. He forgiveth whom He pleaseth, and punisheth whom He pleaseth, for Allāh hath power over all things”,¹⁹¹ they felt upset again and the verse, “On no soul doth Allāh place a burden greater than it can

bear. It gets every good that it earns, and it suffers every ill that it earns”,¹⁹² was revealed. When some of them contemplated apostasy or other similar acts and were afraid that they would not be forgiven, the Prophet (pbuh) was asked about it, then the following verse was revealed: “Say: ‘O my Servants who have transgressed against their souls! Despair not of the Mercy of Allāh: for Allāh forgives all sins: for He is Oft-Forgiving, Most Merciful.’”¹⁹³ When this world and its goods were looked down upon, some of the Companions (God be pleased with them) resolved to withdraw from it, relinquishing women and the pleasures of this world, cutting themselves off for the sake of worship. The Prophet rejected their views and said, “He who deviates from my *sunna* does not belong to me.”¹⁹⁴

He prayed for an increase in the wealth and progeny of the people, after the following verse was revealed, “Your riches and your children may be but a trial”,¹⁹⁵ when wealth and children are the world. He affirmed the seeking of this world and of wealth by the Companions (God be pleased with them) through lawful means. He did not preach asceticism and the renunciation of this world. (Pursuing this world was approved), except in the case of greed or the denial of the rights of others or when there was the likelihood of opposing moderation due to this (greed). In all other cases, there was no restriction. For those who rendered this meaning opaque, Allāh conveyed the information of the condition for rewarding the believers in the Hereafter – that is, it will be a recompense for their conduct. He attributed their acts to them and assigned responsibility saying, “A reward for their (good) deeds.”¹⁹⁶ He negated the cessation of favours by His words, “For they shall have a reward unailing.”¹⁹⁷ When they sought to portray their acts as a favour, Allāh the Exalted said, “They impress on thee as a favour that they have embraced Islam. Say, ‘Count not your Islam as a favour upon me: nay, Allāh has conferred a favour upon you that He has guided you to the faith, if ye be true and sincere.’”¹⁹⁸ Thus, Allāh based the favour to them in the matter towards Himself,¹⁹⁹ because it was the definitive truth, and further He denied to them what was attributed to others saying, “That He has guided you to the faith”²⁰⁰ – that is, had it not been for the guidance, you would not have been able to do the favour. This intended idea is to be found in the tradition of the steam flowing down from the black rocky terrain about which a dispute developed between al-Zubayr and a man from the Anṣār. The Prophet (pbuh) commanded al-Zubayr to do what is good (*maʿrūf*), “Irrigate your land O Zubayr and then let the water flow towards your neighbour.” The man said, “Just because he is your cousin?” At this, the Prophet’s face changed colour and he said, “Irrigate your land O Zubayr until the water comes up to the walls.” He secured for him his full right. Al-Zubayr said that it was in this case that the verse, “But no, by thy Lord, they can have no (real) faith, until they make thee judge in all disputes between them, and find in their souls no resistance against thy decisions, but accept them with the fullest conviction”, was revealed.²⁰¹

This is how you will find the *shariʿa*, always, in its directives and sources. It is in the same manner that the expert physician operates. Initially he prescribes food that requires a balance of compatibility between the temperament of the patient and the nature of the food. He informs the unaware patient of some of the things consumed, if he happens to ask him, as to whether it is food, poison or something else. If he develops a problem due to the administration of some mixtures, the physician counters it with a treatment that turns the indisposition to the other side, so that he returns towards the balance, which is the true temperament, and the sought after health. This is the ultimate form of compassion, and the utmost in favours and blessings from Allāh, Glory be to Him.

Sub-Issue: Maintaining a Balance in Obligations

When you examine the *shariʿa* in its totality, and reflect upon it, you will find it maintaining a balance. If you see an inclination towards one extremity, it is due to a happening, or something expected, at the other extreme. The extreme of severity – along with what are generally treated as threats, intimidation and deterrents – is employed to oppose someone who is overwhelmed by deviation from the *dīn*. The extreme of leniency – along with what is generally taken to be indulgence, inducement and concession – is employed to oppose one who is overcome by constriction through the intensity of his zeal (asceticism). If it is not the former or the latter, you will find the standard of the middle path being raised, with the method of the balance being manifest. This is the base to which one returns and the fortress to which one retreats.

Accordingly, if you see in what is transmitted from one of the authorities in *dīn* an inclination away from the mean path, then know that he is exercising care at one extremity about a happening, or expected event at the other extremity. It is in this fashion that the examination of issues of piety, asceticism and what is similar is undertaken, as well as of what is opposite to these tendencies. The middle path is known through the law (*sharʿ*), and at times through practices as certified by most reasonable persons, as in the case of extravagance and covetousness in spending.

NOTES

- 1 The learned editor points out that he has never come across this definition of the word *sabab* (cause). In this meaning, cause is something that is within the power of the subject to bring about. The editor, however, is referring to the general meaning of cause which is either brought about by the Lawgiver, like the setting of the sun, or by the subject, like performance of some act, for example, theft that is a cause for the cutting of the hand. The learned Author, on the other hand, is referring to the conditions of obligation (*taklif*) and among these is the condition that the subject will not be asked to perform an act that is impossible to perform. This act is referred to as the cause here, as it will become a cause for something. The Author usually makes such statements that on an apparent reading sound incorrect. An illustration is his first sentence of the book; namely, the *uṣūl al-fiqh* are definitive (*qatʿī*).
- 2 Editor: The Ḥanafis and the Muʿtazila deny its rational possibility as well.
- 3 Qurʾān 2:132. Editor: The verse is an example of being a Muslim prior to death. The second example is that of a choice between being a murderer or the victim. The third is about dying in a state where injustice is not imputed to the person.
- 4 Scholars says that this tradition is quoted by writers, but is not found in an authentic narration in these words. There are, however, other traditions that convey the same meaning, for example, Muslim, *Ṣaḥīḥ*, vol. 4, 1467, Tr. No. 1847.
- 5 This tradition is not to be found in these words.
- 6 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 93, Tr. No. 2902.
- 7 Editor: That is, irrespective of what is prior to these traits or what is linked to them or arises from them.
- 8 Qurʾān 21:37.
- 9 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 2016, Tr. No. 2611.
- 10 It is recorded by Ibn Ḥibbān from Abū Ḥurayra (God be pleased with him), but it is considered a weak tradition. It has also been recorded by Ibn Abī Shayba in *al-Muṣannaf*, vol. 12, 333.
- 11 It is recorded by Ibn ʿAddī, *al-Kāmil*, vol. 2, 701 as well as by al-Bayhaqī.
- 12 It is recorded by Aḥmad, *al-Musnad*, vol. 5, 252; and by ʿAbd al-Razzāq, *al-Muṣannaf*, vol. 11, 161.
- 13 Qurʾān 2:132.
- 14 It is recorded by al-Bukhārī, *al-ʿAdab al-Mufrad*, Tr. No. 594.
- 15 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 664, Tr. No. 3789.
- 16 We have stated in earlier notes that the learned Author has attempted to widen the meaning of the *shariʿa*, although he does have a plan for doing so. Here he is using the term *fiqh* to include ethics, morality and natural instincts within the meaning of *fiqh*. At the end of the discussion he does maintain that obligations cannot be created for such traits, feelings and instincts, but the meaning needs to be clarified. *Fiqh* in its technical sense, means knowledge of *aḥkām* – that is, legal rules. It is obvious from this that *fiqh* in this sense cannot include those things for which laws cannot be made, like anger, hate and love. It is true that some of these traits and feelings can be included in the wider meaning of “acts” of the subject, but such a meaning is qualified to mean acts for which legal rules can be made. We have, therefore, translated the term *fiqh* to mean a general understanding of such feelings and instincts. The distinction must be kept in mind, for the Author’s book apparently deals with the law and not with ethics, morality or even psychology.
- 17 See al-Ghazālī’s *Iḥyāʾ Ulūm al-Dīn*, volume 3.
- 18 The Author clarifies here that laws or positive duties cannot be created for such matters. Accordingly, they cannot be included in the meaning of *fiqh*. In addition to this, *fiqh* also does not deal with the tenets of faith, but they are included in the meaning of the term *shariʿa*.

- 19 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 664, Tr. No. 3789.
- 20 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 48–49, Tr. No. 18.
- 21 It is recorded by Ibn Ḥibbān from Abū Ḥurayra (God be pleased with him), but it is considered a weak tradition. It has also been recorded by Ibn Abī Shayba, *al-Muṣannaf*, vol. 12, 333.
- 22 It is part of a tradition that is recorded by Ibn ʿAddī in *al-Kāmil*, vol. 4, 1502.
- 23 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 369, Tr. No. 3336.
- 24 It is recorded by Mālik, *al-Muwaṭṭaʿ*, vol. 2, 953–54.
- 25 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 2052, Tr. No. 2664.
- 26 It is recorded by al-Ṭabarānī, *al-Aṃṣaṭ*, Tr. 2964.
- 27 It is recorded by Aḥmad, *al-Musnad*, vol. 5, 252; and by ʿAbd al-Razzāq, *al-Muṣannaf*, vol. 11, 161.
- 28 Qurʾān 21:37.
- 29 Qurʾān 5:54.
- 30 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 664, Tr. No. 3789.
- 31 It is recorded by Abū Dāwūd, *Sunan*, vol. 4, 22, Tr. No. 4681.
- 32 Qurʾān 4:148.
- 33 Qurʾān 9:46.
- 34 It is recorded by Abū Dāwūd, *Sunan*, vol. 2, 255, Tr. No. 2178. It is, however, considered a weak tradition. The tradition has preceded in Volume 1.
- 35 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, 301–302, Tr. No. 4637.
- 36 Qurʾān 3:134.
- 37 Qurʾān 3:146.
- 38 Qurʾān 2:222.
- 39 Qurʾān 31:18.
- 40 Qurʾān 3:57.
- 41 Abū al-Layth al-Samarqandī, *Bustān*, 28. From what the scholars discuss, it appears to be a false tradition.
- 42 See above where he says, “The second type, which are part of nature, are examined from two perspectives: First: whether they are dear to the Lawgiver or they are not; and second: whether or not they are followed by reward.”
- 43 The learned editor points out that love and hate when they refer to Allāh are quite different from what they mean with reference to creatures.
- 44 It is reported by Muslim, *Ṣaḥīḥ*, vol. 4, 1751, Tr. No. 2230.
- 45 Editor: A consensus (*ijmāʿ*) has taken place that there is no obligation to perform the impossible, like combining two opposites and so on.
- 46 Editor: Because they stipulate the exercise of will in all this, which makes it difficult to intend the impossible.
- 47 Qurʾān 16:7.
- 48 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 213, Tr. No. 1969.
- 49 Part of a tradition from Abū Hurayra that is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 6463, as well as by others.
- 50 Qurʾān 7:157.
- 51 Qurʾān 2:286.
- 52 It is part of a lengthy tradition that is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 116, Tr. No. 126.
- 53 Qurʾān 2:286.
- 54 Qurʾān 2:185.
- 55 Qurʾān 22:78.
- 56 Qurʾān 4:28.
- 57 Qurʾān 5:6.
- 58 It is recorded by Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, vol. 1, 192, but is considered a *marfūʿ* and *mursal* tradition.

- 59 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 566, Tr. No. 3560.
- 60 Editor: This is not specific to the omission of sin; rather, it runs through all kinds of omissions. In such a case, the words “He said ...” are not clear.
- 61 Editor: This in fact amounts to the fourth evidence.
- 62 Editor: This is what was attributed to al-Qarāfī where he classified all acts as some kind of hardship. The editor then classifies hardships into two types: those that have to be borne like cold during ablation or endangering life during *jihād*. The second category is broken down into three types some of which can be given up while others cannot.
- 63 Editor: What has preceded is the evidence that the Lawgiver does not intend the hardship beyond the ordinary, and it is that hardship for which exemptions have been created along with leniency. The discussion here pertains to hardship that is within the ordinary. As the two topics are different, the evidences for one cannot be used as evidences for the other even though the common element of hardship is to be found.
- 64 Qurʾān 2:286.
- 65 Qurʾān 22:78.
- 66 Qurʾān 9:120.
- 67 Qurʾān 22:78.
- 68 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 137, Tr. No. 651.
- 69 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 219, Tr. No. 251.
- 70 Qurʾān 2:216.
- 71 Qurʾān 9:111.
- 72 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 103, Tr. No. 5640.
- 73 Scholars have indicated here that the reward is not in reality for the hardship suffered, but for the patience and consent exhibited. They add that reward is for acts, while hardship and suffering are not acts. The learned Author talks about acts in the next section.
- 74 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 462, Tr. No. 665.
- 75 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 462, Tr. No. 665.
- 76 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 462, Tr. No. 665.
- 77 It is recorded by Ibn al-Mubārak in *al-Zuhd*, No. 1309.
- 78 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 460, Tr. No. 663.
- 79 That is, in his *Ṣaḥīḥ*.
- 80 Editor: If this was the place where Banū Salama were resident then the place had significance due to the words “the city will be exposed”, but it is possible that some other Anṣār are mentioned here.
- 81 It is reported by Ibn Shabba in *Tārīkh al-Madīna*, vol. 1, 147; al-Ṭaḥāwī, *Sharḥ Maʿānī al-Āthār*, vol. 4, 195. The editor says that the *isnād* of this tradition are weak.
- 82 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 139, Tr. No. 655.
- 83 Editor: ‘Aqīq, which was at a distance of six miles from Medina.
- 84 Editor: The report is considered *ḥasan*. The scholars agreed that the opinion of a Companion is not proof that is to be followed by another Companion. They disagreed as to whether it is proof in this meaning for a Follower and those who came later.
- 85 Editor: This is merely the preference of one form of worship, in which there is greater hardship, over another. There is no evidence of intending hardship here.
- 86 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, 104, Tr. No. 5063.
- 87 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, 117, Tr. No. 5073.
- 88 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 586, Tr. No. 6704.
- 89 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 2055, Tr. No. 2670.
- 90 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 586, Tr. No. 6704.
- 91 Mālik, *al-Muwattaʿ* (transmitted by Yaḥyā), vol. 2, 476.
- 92 Qurʾān 2:185.
- 93 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 183, Tr. No. 1946.
- 94 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 22, Tr. No. 89.

- 95 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 136, Tr. No. 7158.
- 96 Qurʾān 4:43.
- 97 Qurʾān 2:45.
- 98 Qurʾān 49:7–8.
- 99 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 213, Tr. No. 1969.
- 100 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 251, Tr. No. 2012.
- 101 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 36, Tr. No. 1151.
- 102 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 541–42, Tr. No. 758.
- 103 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 197–98, Tr. No. 702.
- 104 The tradition is recorded by some scholars, for example, al-Haythamī, *Majmaʿ al-Zawāʿid*, vol. 1, 67, but is considered weak.
- 105 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 202, Tr. No. 1964.
- 106 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 136, Tr. No. 7158.
- 107 It is part of a lengthy tradition recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 209, Tr. No. 1968.
- 108 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 217–18, Tr. No. 1975.
- 109 It is recorded by Abū Dāwūd, *Sunan*, vol. 4, 296–97, Tr. No. 4985.
- 110 It is recorded by Aḥmad, *Musnad*, vol. 3, 128, 199, 285.
- 111 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, 584, Tr. No. 2820.
- 112 A similar tradition is recorded by Abū Dāwūd, *Sunan*, vol. 3, 318, Tr. No. 3646.
- 113 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 136, Tr. No. 7158.
- 114 It is recorded by Ibn Abi Shayba, *al-Muṣannaḥ*, vol. 1, 367; vol. 2, 292.
- 115 Editor: There many such examples in *Iqāmat al-Ḥujja* by al-Lakhnawī, as well as in many other sources.
- 116 Editor: See *al-Ḥuliyya*, vol 2, 87. The Author has transmitted it from him in his book *al-Itiṣām* with the comments that he means prolonged supererogatory prayers with lengthy bowing and prostration.
- 117 Editor: This is mentioned in his biography, see *al-Itiṣām*, vol. 1, 399 by the Author.
- 118 Editor: The report is in several books and is also mentioned in *al-Itiṣām*, vol. 1, 399 by the Author.
- 119 It is reported by al-Dhahabī in his biography in *al-Siyar*, vol. 4, 67–68 and by the Author in *al-Itiṣām*, vol. 1, 400.
- 120 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 136, Tr. No. 7158.
- 121 Qurʾān 4:29.
- 122 Qurʾān 4:29.
- 123 Qurʾān 4:29.
- 124 Qurʾān 21:107.
- 125 It is reported with its chain leading up to Ḥasan by al-Khaṭīb, *Tārikh*, vol. 14, 241–42.
- 126 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 209, Tr. No. 1968.
- 127 Qurʾān 87.
- 128 Qurʾān 91.
- 129 Qurʾān 92.
- 130 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 192, Tr. No. 700, 701.
- 131 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 202, Tr. No. 709.
- 132 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 224, Tr. No. 1979, 1980.
- 133 It is recorded by ʿAbd al-Razzāq, *al-Muṣannaḥ*, Tr. No. 7903, and by al-Ṭabarānī in *al-Kabīr*, vol. 9, 195–97.
- 134 It is recorded in *Tartīb al-Madārik*, vol. 1, 430.
- 135 Editor: His evidence is in the tradition recorded by Abū Dāwūd, *Sunan*, vol. 2, 41, Tr. No. 1342, which says that the Prophet (pbuh) did not stay up for prayer all night.
- 136 These words are part of a tradition that begins with the words, “This religion is based on ease ...” It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 93, Tr. No. 39. The tradition is related from Abū Hurayra (God be pleased with him).

- 137 Editor: What is required is a balance, and there is no prohibition in what Allāh has prepared for him, there being no unbridled pursuit in it.
- 138 Editor: The editor tries to elaborate this point through statements that are even more confusing; therefore, we feel that the example given by the Author below is better.
- 139 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 1021, Tr. No. 1403.
- 140 Editor: This is an example of a recommended act that leads to what is disapproved by the *shariʿa*, which is the dislike of acts of worship. The example given after this is about the relinquishment of an act for another act that is of greater benefit – that is, the recitation of the Qurʾān.
- 141 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 789, Tr. No. 1120.
- 142 Editor: The basis for this is that dependence upon people is humiliating for the person, and the *shariʿa* takes care of the individual's self-respect in many ways.
- 143 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 209, Tr. No. 1968.
- 144 This is part of a lengthy tradition that has been recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 340–41, Tr. No. 6502.
- 145 Editor: That is, it is not intended in so far as there is disapproval for it.
- 146 Qurʾān 2:194.
- 147 Editor: The learned editor writes a lengthy essay here on the use of terms like joke and planning (*makr*) for Allāh. We do not feel the need to reproduce it here as the explanation given by the learned Author is sufficient.
- 148 Qurʾān 2:15.
- 149 Qurʾān 3:54.
- 150 Qurʾān 86:14, 15.
- 151 Qurʾān 21:23.
- 152 It is part of a tradition that has been recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 405–406, Tr. No. 6541.
- 153 It is recorded by Abū Dāwūd, *Sunan*, vol. 4, 3, Tr. No. 3855.
- 154 The discussion was started by the Author at the beginning of the fifth issue where the meaning of different types of hardship was explained. Four forms were described there. The fourth form is discussed in the next section.
- 155 Qurʾān 45:23.
- 156 Qurʾān 53:23.
- 157 Qurʾān 48:14.
- 158 In the fourth volume.
- 159 Qurʾān 21:2–3.
- 160 Qurʾān 23:10.
- 161 Qurʾān 23:23.
- 162 Editor: Perhaps this was not a burden placed on them, but was meant to be a punishment for them. This cannot be considered hardship that is beyond the ordinary.
- 163 Qurʾān 9:118.
- 164 Editor: That is, the hardship resulting from the prohibition of marrying them except when the matter went to the extent that the person would reach the state where he would be tempted to commit unlawful intercourse.
- 165 Qurʾān 4:25.
- 166 That is, when ordinary hardship is not considered ordinary, but what is beyond the usual.
- 167 Qurʾān 9:41.
- 168 Qurʾān 9:41.
- 169 Qurʾān 9:41.
- 170 Editor: It is mentioned by Ibn al-ʿArabī, *Aḥkām al-Qurʾān*.
- 171 Cramped; a tight situation; constriction.
- 172 Something similar to this is recorded by Ibn Jarīr al-Ṭabarī, *Tafsīr*, vol. 17, 206.

- 173 Editor: This is like the interpretation of each verse in which the underlying cause is that of burdens. The conclusion is that Allāh knows the secrets just as He knows what is about to happen. Knowledge relates to what exists and what does not exist, and obligations are ordained to uncover the secrets of the servant, because recompense is based upon what occurs.
- 174 Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, vol. 3, 1306.
- 175 A young camel. This will be coming up later. The word *jadhʿ*, as distinguished from *jadhʿa*, means a goat.
- 176 The details will be coming up later.
- 177 Qurʾān 2:215.
- 178 Qurʾān 2:215.
- 179 Qurʾān 2:22.
- 180 Qurʾān 14:32–34.
- 181 Qurʾān 16:10.
- 182 Qurʾān 10:24.
- 183 Qurʾān 57:20.
- 184 Qurʾān 29:64.
- 185 Editor: That is, likelihood of departure from such a middle path, as he has indicated earlier.
- 186 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 244, Tr. No. 6427.
- 187 Qurʾān 7:32.
- 188 Qurʾān 23:51.
- 189 Qurʾān 6:82.
- 190 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 89, Tr. No. 23.
- 191 Qurʾān 2:284.
- 192 Qurʾān 2:286.
- 193 Qurʾān 39:53.
- 194 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, 104, Tr. No. 5063.
- 195 Qurʾān 64:15.
- 196 Qurʾān 32:17.
- 197 Qurʾān 95:6.
- 198 Qurʾān 49:17.
- 199 Editor: He did not attribute the act to them, but to Himself, and He did this as a favour to them as against others, to whom He attributed the act, but denied the favour in this to them.
- 200 Qurʾān 32:17.
- 201 The tradition is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 34, Tr. No. 3359, 3360.

THE FOURTH CATEGORY: THE INTENTION OF THE LAWGIVER IN BRINGING THE SUBJECT WITHIN THE FOLD OF THE RULES OF THE *SHARI‘A*

The fourth category is about the elaboration of the intention of the Lawgiver in bringing the subject within the fold of the rules of the *shari‘a*. It consists of several issues.

The First Issue: The Goal of the *Shari‘a* Is to Bring the Subject out of the Compulsions of His Desire

The primary legal objective¹ of the promulgation of the *shari‘a* is to free the subject from the exigencies of his own whims so that he may be the servant of Allāh by choice, just as he is the servant of Allāh by compulsion.²

The evidence of this is seen in several ways.

First: the explicit texts indicating that the servants have been created to worship Allāh by submitting to his commands and prohibitions. This is visible in His words, “I have only created jinns and men, that they may serve Me. No sustenance do I require of them, nor do I require that they should feed Me”,³ “Enjoin prayer on thy people, and be constant therein. We ask thee not to provide sustenance: We provide it for thee”⁴ and “O ye people! Worship your Guardian Lord, who created you and those who came before you, that ye may become righteous.”⁵ He then gave the meaning of worship as detailed in the Sūra: “It is not righteousness that ye turn your faces towards east or west; but it is righteousness: to believe in Allāh and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and give *zakāt* (regular charity); to fulfil the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the God fearing.”⁶ The same applies to all the other rules stated in the Sūra and then He said, “Serve Allāh, and join not any partners with Him.”⁷ The directives continue in other verses that command worship in absolute terms and provide the details in general. All this reverts to the idea that recourse is to be had to Allāh under all circumstances by submitting to His commands at all times. This is the meaning of worshipping Allāh.

Second: another way are the evidences that condemn defiance of this intention, which is evident in the prohibition of opposing the commands of

Allāh and the condemnation of one who turns away from Allāh. These are followed by threats of torment in this world consisting of specific penalties for each type of opposition, as well as torment in the next world. The basis of all this is the pursuit of whims as well as submission and obedience to worldly desires and temporary lusts. Allāh has deemed the pursuit of whim as being contrary to the truth and its opposite, therefore, Allāh has said, “O David! We did indeed make thee a vicegerent on earth: so judge thou between men in truth (and justice): nor follow thou the lust (of thy heart), for it will mislead thee from the path of Allāh”⁸ and “Then, for such as had transgressed all bounds, and had preferred the life of this world, the Abode will be hell-fire.”⁹ He said about its opposite, “And for such as had entertained the fear of standing before their Lord’s (tribunal) and had restrained (their) soul from lower desires, their abode will be the Garden.”¹⁰ He then said, “Nor does he say (ought) of (his own) desire. It is no less than Inspiration sent down to him.”¹¹

He, thus, encompassed the matter within two things: revelation, which is the *shari‘a*, and desire. There is no third thing besides these two. If this is the case, the two are opposites. When the truth has been identified to lie in the *shari‘a*, the opposite becomes identified as desire. The pursuit of desire amounts to going against the *shari‘a*. The Almighty has said, “Then seest thou such a one as takes as his god his own vain desire? Allāh has, knowing (him as such), led him astray, and sealed his hearing and his heart (and understanding), and put a cover on his sight. Who, then, will guide him after Allāh (has withdrawn guidance)? Will ye not then receive admonition?”¹² “If the Truth had been in accord with their desires, truly the heavens and the earth, and all beings therein, would have been in ruin! Nay, We have sent them their admonition, but they turn away from their admonition”,¹³ “Such are men whose hearts Allāh has sealed, and who follow their own lusts”¹⁴ and “Is then one who is on a clear (Path) from his Lord no better than one to whom the evil of his conduct seems pleasing, and such as follow their own lusts?”¹⁵

Ponder over this, for in each place in which Allāh has mentioned desire, He has deemed it an object of blame and has also blamed those who pursue it. This idea has been transmitted from Ibn ‘Abbās (God be pleased with him). He said, “Allāh has not mentioned desire in his Book without assigning blame to it.”¹⁶ All this makes it evident that the intention of the Lawgiver is to take the subject out of the pursuit of his desires and to bring him within the fold of worship of the Master.

Third: third comes the knowledge through experiences and practices that convey the meaning that the interests of this world and the next cannot be secured through an uncontrolled pursuit of desire, and by walking alongside personal fancies, because they necessarily lead to injury, mutual conflict and destruction, which run counter to these interests. This is well known to humans through continuous experience and practice. Accordingly, they agreed in assigning blame to whoever pursues his desires and acts in accordance with

its requirements, so much so that even those who did not have a *shariʿa* that they could follow, or they had one that they obeyed, required the securing of worldly interests by restricting, on rational grounds, anyone who pursued his desires. They agreed on this due to its validity in their opinion, and intending to secure their welfare in this world they made it a regular required practice. It is this that they called *siyāsa madaniyya* (civil policy). It is a matter upon the validity of which transmission and reason come to converge as a whole, and it is manifest to the extent that it needs no argument.¹⁷

When this is the conclusion, it is not proper for anyone to claim that the *shariʿa* has been laid down to satisfy the requirements of the desires and personal whims of the servants. The reason is that the categories or rules of the *shariʿa* do not go beyond five. As for obligation and prohibition, they obviously clash with the unbridled pursuit of one's will. For it is said, "Do this, whether you have desire to do so or not" or "Do not do this, whether you have a desire to omit it or not." If the desire of the subject corresponds with this, and there is a desire that drives him towards the requirements of the command or prohibition, then it is due to an external factor and not through the essence of the command or prohibition. In the remaining categories, even though apparently they are subject to the will of the servant, they have been placed under his will by the act of the Lawgiver; they are likely to revert to exclusion from his will. Do you not see that the *mubāḥ* (permissible) category is sometimes subject to his choice, but at other times it is not? On the assumption that he does not have a choice, rather is under a compulsion to remove it, for example, then how can it be said that it is within his choice? How many are the pursuers of desires who wish that such permissible act be declared prohibited, so much so that if its legislation had been delegated to them they would have declared them prohibited, just like those who dispute the truth have denied it. On the assumption that the matter depended on the exercise of his will or pursuit of his desire, he would have wished that the act be undertaken, so much so that if it had been left to his discretion he would have made it obligatory. Thereafter, the matter of this permissible act is likely to be reversed. Thus, he will make obligatory today what he will permit tomorrow, and *vice versa*; therefore, no suitable rule can be made for such a matter in unqualified terms. In such a case, desires will come to converge upon a single thing, and the system will be disrupted on account of the pursuit of desires and wishes. Praise be to Allāh then, who revealed in His Book, "If the Truth had been in accord with their desires, truly the heavens and the earth, and all beings therein would have been in ruin! Nay, We have sent them their admonition, but they turn away from their admonition."¹⁸

Consequently, the permissibility in the *mubāḥ* does not necessarily mean its inclusion under the will of the subject in unqualified terms, except that it is due to the decree of the Lawgiver. In such a case, his will is subject to the directives of the *shariʿa*, and his goals are to be derived from the legal permission and not by letting loose his natural free will. This is the essence of

taking the subject out of the control of his desires so that he may be the servant of Allāh.

Suppose it is said: The promulgation of the *shariʿa* is either futile or it is for a purpose. The first is a nullity by agreement. Allāh the Exalted has said, “Did ye then think that We had created you in jest, and that ye would not be brought back to Us (for account)?”,¹⁹ “Not without purpose did We create heaven and earth and all between! That was the thought of Unbelievers! But woe to the Unbelievers because of the fire (of hell)!”²⁰ and “We created not the heavens, the earth, and all between them, merely in (idle) sport. We created them not except for just ends: but most of them do not know.”²¹ If they were created due to an underlying wisdom or for an interest to be secured, then the interest is either meant to serve Allāh Himself or the servants. Referring it to Allāh is impossible, for He is free of all wants; referring such interests to Him is impossible as has been elaborated in *ʿIlm al-Kalām*. That leaves nothing else but to attribute them to the servants, which means the requirements of their desires, because each reasonable person seeks his own interest as well as what suits his desires in this world and the next. The *shariʿa* has granted human beings this desire within the obligations. How then can we negate that the *shariʿa* has been promulgated in accordance with the desires of the servants and the demands of their whims?

The response is: If it is conceded that the *shariʿa* has been promulgated for securing the interests of the servants, then it applies to them in accordance with the command of the Lawgiver, and within the limits that He has prescribed, and not according to their desires and lusts. It is for this reason that the obligations of the *shariʿa* appear burdensome to persons, and the senses, practice and experience bear witness to this fact. The commands and prohibitions move the person out of the demands of his nature and his uncontrolled aims. Thus, he partakes of his desires within the legislated limits. This is the meaning, and it is the very essence of opposition to desires and lusts. As for the interests secured within the obligations being referred to the subject for this world and the next, it is valid; however, it does not follow from this that their acquisition by him is outside the bounds of the law. It also does not mean that he can acquire them on his own without the *shariʿa* granting them to him for acquisition, which is obvious. This makes it evident that there is no conflict between this statement and what has preceded, because what has preceded is the examination of the proof that benefit and desire are there in so far as they have been established by the Lawgiver, and not from the perspective of the demands of whims and lusts. This is what we intended to say here.

Sub-Issue: Nullity of Acts Based on Pure Desire

When the above is established, it becomes the basis for certain rules.

Among these is the rule that each act in which the basis is the pursuit of desire without qualification and without reference to commands, prohibitions

and choices is a nullity in the absolute sense. The reason is that for each act there is a motive that pushes one towards it and a need that invites one to (commit) the act. If the compliance of the directives of the Lawgiver has no role to play in this, then it is nothing but the demand of desires and lusts. Anything that is of this nature is a nullity in the absolute meaning, because it amounts to opposing the truth in the absolute sense. Such an act is void absolutely in accordance with the requirements of the preceding arguments. Ponder over the tradition of Ibn Mas‘ūd (God be pleased with him) recorded in *al-Muwatta’*: “You are in a time when there are many *faqih*s (those who understand religion), few reciters, the limits set by the Qur’ān are kept when the words are lost, there are few who ask and many who give, they lengthen their prayers and curtail the sermon (*khutba*), and they give precedence to their acts over their desires. A time will come over people when there will be few *faqih*s and many reciters, the words will be preserved but the limits set by the Qur’ān will be set aside, many who will ask and few who will give, they will give lengthy sermons and curtail their prayers, and they will give precedence to their desires over their acts.”²²

As for acts of worship (based upon desire) they are obviously null and void. In the case of the practices, in so far as no reward is assigned to the command and prohibition, they are the same whether or not they are performed with some desire. Likewise, the permission in not taking from the benefactor, as has preceded in the *Book of Ahkām* as well as in this book. Each act that is performed in compliance with an unqualified command, prohibition or choice, is valid and true, because it has been brought about in a manner that has been prescribed for it, and the intention of the actor in it has conformed with the intention of the Lawgiver. It will amount to a reward in its entirety, which is obvious.

If, however, the two things are intermingled and what is required is acted upon, then the rule is assigned to what is predominant and prior. If what is prior is the intention of the Lawgiver, where the actor has directed his desire in a manner that is legally prescribed, then there is no problem in this and the act is linked with the second type, which is an act performed essentially in accordance with the requirements of the law. The reason is that working for one’s interests and purposes does not negate the formulation of the *shari‘a* from this perspective, because the *shari‘a* too is laid down for the interests of the servants. Thus, where he makes his personal desire subservient, no harm comes to the actor. There is, however, a condition that is acknowledged here. The condition is that the interest secured, or to be secured, must be an interest that the Lawgiver has legislated to be secured in such a case. When it is not so, what is prior is not the command of the Lawgiver. The elaboration of this condition is made at its proper occasion. If what is predominant and prior is desire, and the command of the Lawgiver has become subservient, then the act is assigned to the first type.

The distinctive factor between the two types is the application or non-application of the intention of the Lawgiver. For each act in which the actor mixes up his desire with the act, it is to be examined whether he restrains his desire and lust in the face of the prohibition of the Lawgiver. In all such cases, the priority is for the command of the Lawgiver, while the desire is subservient. If he does not restrain his desire when faced with the prohibition, the predominant and prior factor is his desire and lust, while the permission of the Lawgiver is subservient and is not assigned a rule. A person having intercourse with his wife when she is in a state of purity may be doing so in compliance with his desire or due to the permission of the Lawgiver. If she starts menstruating and he restrains himself then it is an indication that his personal desire is subservient, otherwise the indication is that it is prior.

Sub-Issue: Pursuit of Desire a Means towards a Blameworthy Act

Among the rules is that pursuit of desire is a means towards a blameworthy act even if it occurs within a praiseworthy act. The reason is that when it becomes obvious that its form is clashing with the form laid down by the *shari'a*, then whenever it clashes with the requirement of the act it is a matter of apprehension:

First: it is a cause for the suspension of the commands and the commission of what is prohibited, because it opposes the prohibitions.

Second: when he follows it and makes a habit out of it, the self becomes enthusiastic about it and gets used to it so that it accompanies him in his acts, and especially so as it is created with the acts and is linked to them at the atomic level. When the desire precedes the act requiring lawful obedience, it comes before the act, but then his self overtakes him and when the self overtakes him the act of obedience becomes subservient to the self and is assigned the same rule. This leads the person rapidly into opposition, and empirical evidence is what governs here.

Third: as for the third point, the result of the acts of the actor according to the requirements of obedience is a sense of pleasure in what he is involved with, the enjoyment of blessings through what he gathers of the fruit of his understanding, and the opening of the hidden forms of knowledge. He is sometimes given spiritual powers too, and is made well known in the land. As a result, people rush towards him and gather around him to benefit from him, making him a leader for securing their worldly and otherworldly wants. To these are added other merits that are associated with those who tread the path of good deeds such as prayer, fasting, search for knowledge, seclusion for worship and all the remaining necessities to the path of blessings. When he attains this state, the self feels an exuberance and closeness, affluence and pleasure, and a feeling of blessings so that whatever is in the world appears trivial as compared even to a moment of this state. The feeling is reflected in

the statement made by some of them, “If the monarchs were to know what we were enjoying they would surely slay us for it with their swords”, or whatever it is they said. When this is the case, perhaps the self is drawn towards the basic source of these results and desire precedes the acts. This is the stage of falling from this status, may Allāh protect us from it. Besides all this, even though desire in praiseworthy acts is not assigned blame on the whole, it sometimes becomes blameworthy in the absolute sense. The evidence for this is induction undertaken through the acts of those who tread the path of piety and through reports of the meritorious and the good. There is no need to elaborate it here.

Sub-Issue: Pursuit of Desire in the Compliance of Legal Rules

Among the rules is that the pursuit of desire, in the compliance of the legal rules, is likely as it is redirected to the purposes of the worshipper, thus becoming a readied instrument for hunting down his targets. It is like the pretender who performs good deeds as a device for obtaining what the people possess. The explanation is self-evident. One who studies the consequences of pursuing desires in matters of the *sharīʿa* will find many irregularities. The complete explanation has preceded in the *Book of Ahkām* where turning to the consequences through causes has been described. Perhaps, the groups led astray, who are mentioned in the tradition,²³ have as their basis the innovation of pursuing their desires instead of the intention of securing the objectives of the *sharīʿa*.

The Second Issue: The Different Types of Purposes

Legal purposes are of two kinds: primary purposes and secondary purposes. As for the primary purposes, the subject has no discretionary role in them, for these are the acknowledged necessities in each nation. We have said that there is no share for the subject in these from the perspective that these are necessities through which the general and absolute interests are secured. They do not vary from one situation to another, from one form to another, from one time to another, but they are divisible into universal necessities (*ʿayniyya*) and communal necessities (*kifāʾiyya*).

Their being universal means that they relate to each subject for his own self. Thus, he is commanded to preserve his *dīn* both in terms of faith and acts. He is required to preserve his life by acquiring the necessities of life. He is required to preserve his intellect by preserving the source of receiving the communication of His Lord to him. He is to preserve his progeny by populating this world thus ensuring his recompense, and as affection and love for his offspring by preventing the mixing up of his genealogy. He is to preserve his wealth to support and implement the first four of the necessities. The evidence that affirms these directives is that if we assume that the subject

has a discretion that may go against these requirements then he will be placed under an interdiction that will act as a barrier between him and his discretion. It is because of this that the statement is made that his role in this is negated and he is overruled for his own sake. If there is a role for him then it is from a different perspective that is subservient to this primary purpose.

The purposes are communal in so far as they are suspended on the acts of others, who perform them in general on behalf of all the subjects so that the affairs of the public are established, without which the affairs of the individual cannot be established. This class of purposes completes the first type. It is linked to the other as they are necessities, because the universal cannot be established without the communal. The reason is that the communal purpose secures the interests of the entire public in general. What is commanded from this perspective is commanded in a way that it is not subject to restriction, because the person is not commanded to act for himself alone, as in that case it would become a universal. In fact, he is commanded to bring them into existence and the underlying reality is that he is the *khalīfa* of Allāh (a person with delegated authority) for His servants according to his ability and according to what he is able to do. A single person is not even able to make matters right for himself and for his family, and undertaking acts for his tribe or for all the inhabitants of the earth is something beyond that. Allāh has, therefore, made some *khalīfas* for establishing the general necessities so that authority is maintained on the earth.

What will indicate to you that this communal requirement is legally devoid of a gain is the fact that those who undertake public affairs are *prima facie*²⁴ forbidden from seeking gains for themselves through the work they are undertaking. Thus, the ruler is not entitled to seek compensation from those over whom he is exercising authority for the exercise of such authority. It is not permitted to the *qāḍī* (judge) to charge wages from the litigants for his adjudication,²⁵ nor the governor for his rule. The *muftī* is not to charge on account of his *fatwā*, the philanthropist for his charity nor the person lending for his loan. To these are to be added all similar acts relating to public matters in which a public interest is being secured. It is for this reason that bribes and gifts are prohibited because the purpose is seeking of authority itself, because the acquisition of a benefit here leads to a general harm, which clashes with the wisdom of the *sharīʿa* in sanctioning such authorities.

It is on these lines that justice is administered among all creatures and the system is established. What is done in opposition to this amounts to the insertion of injustice within the *aḥkām* (legal rules) and the demolition of the foundations of Islam. On examining this, it becomes obvious that universal acts of worship cannot be performed on wages, nor is the intention to seek wages for them valid, and the relinquishment of these duties leads to penalties and disciplining. Likewise the examination of the general interests: their

relinquishment leads to punishment because in their neglect is great harm for the whole world.

As for the secondary purposes, they are those in which the benefit of the subject is acknowledged. It is here that he attains, as required by the instincts embedded in him, the satisfaction of his desires, the enjoyment of permissible things, and the removal of wants. The basis is that the wisdom of the Wise and Knowing Lord has ruled that the preservation of religion and affairs of this world are rectified and maintained by motives on the part of the human being that drive him to earn what he, and others beside him, need. Thus, He created in him the desire to eat and drink when he is compelled by hunger and thirst. This urge moves him to bring about the cause that will satisfy this want to the extent possible. Likewise, He has created in him a lust for women so as to move him to attain the means of reaching this goal. In the same manner, He has created in him sensitivity to heat and cold as well as adverse calamities, which propel him to acquire clothing and residence. Thereafter, He created heaven and hell and sent Messengers explaining that the permanent abode is not here, rather this world is the sowing field for the next world, and that eternal happiness and misery are to be found there. The causes, however, are to be acquired here by having recourse to the limits prescribed by the Lawgiver or by overstepping them. The individual subject alone, however, does not have the ability to acquire and employ these means to meet the desired goals due to his weakness in facing these hurdles. He therefore seeks the co-operation of others striving for his personal benefit and the rectification of his affairs while benefiting others. The collective benefit is thus attained though collective benefit, even though each one is working for his own benefit.

It is from this perspective that the secondary purposes come into the service of the primary purposes and complement them. If Allāh had wanted He could have imposed obligations while denying the benefits, or He could have imposed the obligations while negating the motives that drive towards them. He showed mercy to His servants by deeming them with the intention of populating the earth on the way to the Hereafter, and He deemed the means for acquiring benefits as permissible and not prohibited, but all this according to the legal rules that are most effective for the securing of interests, as the servants work perpetually for what they reckon to be their interests. "But Allāh knoweth, and ye know not."²⁶ Had He wished He would have denied us the desire to seek worldly benefits as a means for the purposes of the Hereafter, for He is the King and He has the ultimate argument. Nevertheless, He created a desire in us for upholding His obligatory rights with a promise of benefits for us (in the next world), and by granting us innumerable immediate benefits that we enjoy on the path to the fulfilment of these obligations. It is in the light of these benefits that it is said: these purposes are secondary, and it is these that are the foundation. Thus, the first type requires mere servility, while the second requires the pleasure of the King for His servants.

The Third Issue: Types of Necessities

It is, consequently, to be concluded that necessities are of two types:

First: those in which a worldly benefit for the subject is intended, like the effort by a human being to secure his interests and those of his family, in the acquisition of food, wife, residence, clothing and transactions related to them like sale, hire, marriage and other forms of livelihood that maintain the human constitution.

Second: those in which there is no worldly benefit intended. These are the obligatory universal duties like physical and financial acts of worship: purification, prayer, fasting, *zakāt*, pilgrimage and acts resembling them. They also include communal duties like public authority, namely, the caliphate, ministry, governorship, captaincy, judgeship, leadership of prayers, *jihād*, education as well as other matters that have been legislated for public matters and which if missing lead to the disruption of the system.

As for the first, as there is a worldly benefit for a human being and his own inner urge drives him to seek it, where this instinct is very powerful in so far as it compels him to do so. Seeking it has not been made mandatory; rather, matters such as a profession, livelihood and marriage have been deemed recommended as a whole and not obligatory. In fact, in many cases it reaches the level of permissibility, as in the words of the Exalted, "But Allāh hath permitted trade and forbidden usury",²⁷ "And when the prayer is finished, then may ye disperse through the land, and seek of the bounty of Allāh: and remember Allāh frequently that ye may prosper",²⁸ "It is no crime in you if ye seek of the bounty of your Lord",²⁹ "Say: Who hath forbidden the beautiful (gifts) of Allāh, which He hath produced for His servants, and the things, clean and pure (which He hath provided), for sustenance?"³⁰ and "O ye who believe! Eat of the good things that We have provided for you."³¹ There are other verses too. Further, if we assume that the adoption of these by the people is like the adoption of the recommended acts in so far as they are permitted to relinquish them, then they would be committing a sin. The reason is that worldly affairs cannot be maintained without management and livelihood. This is imposed by the Lawgiver by way of redirection from the instinctive motive to livelihood so that if there were no desire for benefit or natural attraction, the law would have imposed it as a universal or a communal obligation, like our assumption that maintenance of wives and relatives is not to be paid. There are other cases too.

The conclusion is that this type is of two types. The first type is one in which interests are secured without a mediating link, like the securing of interests by the person himself. The second type is one in which the securing of interests is through a link, which is the benefit of another, like undertaking the affairs of wives and children, and adopting a livelihood through which the benefits of others are secured, like hire, renting, trade as well as all the remaining avenues of industry and earning. In all these a person may seek his

benefit, but also secure someone else's benefit. It is a service that is rendered among creatures, just as some limbs of the human body serve other parts thus securing the interest of all.

In the direct acquisition of interests, the securing of the interests of others is emphasized. This is the ultimate wisdom. When the examination leads to this and this aspect of the motive and what it requires is given up,³² and when what can restrict the motive is not being serviced – rather, it is being opposed – the aspect of restraint is emphasized through deterrents and disciplining in this world with the promise of the fire in the Hereafter. This is like the prohibition of killing a person, unlawful sexual intercourse, consuming wine, dealing in usury, the unlawful appropriation of the wealth of orphans and other people, theft, and other similar things. The bare nature of the human being in seeking his own interest and repelling of harm urges him on to commit these acts.

The same *sharʿi* design is applied in the second category of communal necessities or to most of the necessities. Thus, expectations about the majesty of the sultan, honour of authority, awe of the state, and respect of the commander by the subjects commanded are instinctively ingrained in the human being. The command for these things is applied by way of recommendation and not obligation. In fact, the recommendation (of exercising authority) has been made with restrictive conditions that are contrary to expectations, and they emphasize an examination of what goes against the demands of the self. A number of verses and traditions have been laid down about the prohibition of things towards which the self is inclined, as in the words of the Exalted, “O David! We did indeed make thee a vicegerent on earth: so judge thou between men in truth (and justice): nor follow thou the lust (of thy heart), for it will mislead thee from the path of Allāh: for those who wander astray from the path of Allāh, is a chastisement grievous, for that they forget the Day of Account.”³³ A tradition says, “Do not seek authority. If you seek it under control of the self, you will be subjected to it.”³⁴ A prohibition about the corruption of rulers and lack of sincerity in the exercise of authority has also come down. As all this is against the claims of the self, it does not essentially amount to an evidence about the absence of obligation; rather, the entire *shariʿa* indicates that where the interests of the creation are involved, it is the utmost of obligations.

As for the universal necessities, there is no worldly benefit intended; therefore, the intention to bring them about has been emphasized by obligation and the omission by prohibition. Worldly punishments have been prescribed (for violations). I mean by the intended worldly benefit what is intended by the Lawgiver by deeming it a cause. We know that the Lawgiver has prescribed prayer and other forms of worship not because we should be praised for performing them, nor for attaining prestige or respect in this world or some other vanity of this world, for this would amount to the opposite of the reason for which acts of worship have been ordained; rather, they are purely for Lord of the worlds, “Beware! The *dīn* (religion) is purely for Allāh.”³⁵

The communal acts (necessities) have been legislated in the same manner. They are not meant to secure respect for the sultan, awe of authority, or honour for commands and prohibitions, even though these follow as a consequence, because respect in this world, or greater honour as compared to others, for one who is God-fearing cannot be denied. Likewise, respect for authority does exist in fact and is known and established in the law in so far as it comes as a consequence of the acts of the subject. Similarly, managing the affairs of the subjects in a manner that does not affect the moral probity of those in authority, in accordance with what has been determined by the Lawgiver, is not something that can be denied or prohibited; rather, it is emphatically required. Just as it is obligatory on the ruler to secure the interests of the public, it is the duty of the public to support their functions by providing resources from their treasury, if those are needed. Allāh the Exalted has said, “Enjoin prayer on thy people, and be constant therein. We ask thee not to provide sustenance: We provide it for thee”³⁶ and “And for those who fear Allāh, He (ever) prepares a way out, and He provides for them from (sources) they never could imagine.”³⁷ A tradition says, “When someone seeks knowledge, Allāh undertakes to provide his sustenance.”³⁸ There are other texts like these and all indicate that where the subject undertakes to perform acts pertaining to the rights of Allāh, it becomes a cause for the provision of his sustenance from Allāh.

Sub-Issue: Aim of the Primary Interest Is the Benefit of the Individual

It is concluded from all this that where there is no benefit for the subject through the primary intention, the benefit is available to him through the secondary intention. Where there is a benefit for the subject through the primary intention, the required act that is achieved is devoid of benefit.

The elaboration of this, in the first instance, is that what is initially established in the *shari‘a* with respect to the primary interest is the benefit of the individual with respect to his self and his wealth. What is beyond this regarding respect for the pious, their merit and moral probity, as well as the deeming of these attributes as the essentials of the *shari‘a* for authority, testimony, establishing the standards of religion and other things, are an addition. Further, there is the love of Allāh and of those in the heavens that is assigned to them, their acceptance in the land, so that the people love them, hold them in high esteem and prefer them over their own selves. They have also exclusively been granted inspiration of their breasts, illumination of the hearts, acceptance of prayers and a variety of spiritual powers. Even greater than this is what is in a tradition attributed to the Mighty Lord, “Whoever torments a friend of mine has come out for open battle with Me.”³⁹

In addition to the above, if a person who has these qualities undertakes public functions that do not leave time for his personal affairs, especially the

acquisition of his interests and benefits, it becomes obligatory on the public to meet these needs. They are under an obligation to provide for him, from their treasury that has been set up for their interests, so that he becomes free of wants and other similar matters that relate to his personal benefits. You can see that he is not free from the satisfaction of his worldly needs while he is cut off from the means of acquiring them, though what will be provided for him on the Day of Judgement is much greater.

In the second instance, the acquisition of necessities, things that consist of blessings, are obviously included within the intention of a person to obtain permissible things. Thus, the eating of delicious things, wearing of soft garments, riding thoroughbreds, and marrying beautiful women are all included in the meeting of wants and the maintenance of what is necessary for life. It has, however, preceded that there is no participation on his part in the maintenance of life in so far as it is necessary. Further, the seeking of gains through trade and various types of sales, hire and other transactions that are treated as dealings among the creatures can amount to the undertaking of the benefit of others even though they are a means for personal benefit. In so far as it amounts to a benefit for him, there is no direct intention other than that it is a means to his benefit. The fact that it is intended as a procedure and means is different from its being intended for itself. The maintenance of wives and children, and all other beings, possessing reason or otherwise, things that legally relate to him, and the maintenance of the means that lead to the desired end, are included in this. Allāh knows best.

Sub-Issue: Acts of Three Types for Communal Interest

When we examine the benefits of the subject, in general and specific terms, with respect to the communal category, we find the acts to be of three types.

The first type is those acts in which the benefit of the subject is not acknowledged in the primary intention, under all circumstances. These are the public authorities and public appointments for securing the interests of the public. The second type of act is those in which the benefit is acknowledged. These are all those acts in which the interest of another person is secured on the way to a person securing his own interest. These include ordinary crafts and professions of all kinds. This type in fact refers to the interest of a person and the acquisition of his own private benefit. The acquisition of the public benefit in this is incidental. The third type is one that is in the middle of these two. It absorbs within it the intention to seek a benefit and also the intention that does not seek a benefit. This is obvious for matters that are not covered entirely under general acts nor are they exhausted by particular acts. Under this category are included the authority over the wealth of orphans, trusts, charity, call to prayer, and other similar matters. From the public aspect, it is proper that benefit be eliminated, but from the private perspective it

is similar to the remaining private crafts that a person pursues for gaining benefit. There is no conflict in this, because the perspective of the command that is without benefit is different from one that is from the perspective of benefit. It is, therefore, recommended that he undertake the act, but not for profit. Thereafter, the benefit is spent on occasions of necessity or otherwise so that it does not remain a matter of recommendation. The basis for this is to be found in the wealth of the orphan, "If the guardian is well-off, let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable."⁴⁰ Also examine what the jurists have said about the wages of the partitioner, and executor of trusts and ongoing charities as well as remuneration for imparting instruction in different fields of knowledge. This category becomes clear through this explanation.

The Fourth Issue: The Pure Benefit of the Subject

The fourth issue is about the pure benefit, of permitted things, that becomes separated from benefit. In such a form, the act is done purely for Allāh the Exalted. The reason is that it is done in accordance with what has been permitted or commanded by Him. If the permission becomes accepted, in so far as the permitted act amounts to a gift from Allāh for His servant, it becomes a pure benefit. It is as if he responds to the demand by obedience without having recourse to other things, and it becomes free of benefit. If it becomes free of benefit, it becomes equivalent to the act in the first type that is legally not assigned compensation and in which there is no benefit for the subject.

If this is the case, should it be linked to it with respect to the legal rule when it is linked to it in the case of intention? This is a matter that is subject to examination, and there are two perspectives of this examination:

First: it may be said that it will be linked to the rule of what is equivalent to it in intention, because the type of benefit here has become exactly the same as the first type with respect to intention. This is like undertaking of an act of worship that is specific to the creatures in as much as there is the improvement of their sustenance and means of livelihood in it, or the person bringing it about for the benefit for the public resembles the treasurer managing the funds of the treasury, or other officials handling public funds. Just as it is not permitted to the person in the first type to accept a gift or compensation from anyone for the authority vested in him, nor for what he offers as worship, likewise here he is not allowed to increase the amount of his need and draw upon what is in his possession, just as the person in authority withdraws a reasonable amount that he needs from what is in his possession. What is beside this he spends without compensation whether this is in the form of a gift, charity, stipend or a grant, or he may consider himself in such acquisition like another person taking what another takes. The reason is that when he has become like an agent for others and the administrator of his interests, he should consider himself to be in the

position of this other person, for he too is a person whose survival is required as a whole.

An obligation similar to this is narrated from many persons of merit. In fact, it is narrated from the Companions and their Followers (God be pleased with them all), for they were experts in earning by being active and following up matters for different types of livelihood, but they did not do this to save wealth for themselves or amass it. They did so to spend it by way of charity and for raising moral standards as recommended by the *shariʿa* along with the good legal practices. Thus, they were trustees for their wealth like the treasurers of the treasury. In this respect, they were at different levels, as has been indicated by reports about them. It was this approach that implied that when they offered services without benefit, they administered these affairs as if there was no benefit in them.

The indication from this trusteeship on the whole, even if we maintain that there is benefit in it, is that when a person seeks a benefit, as permitted to him, he must show concern in it for the right of Allāh and the right of His creatures. The seeking of benefit, even where it is restricted by the existence of legal conditions, the absence of legal obstacles, while the legal causes exist, is absolute and general. In all this there is no benefit for the subject in so far as it is desired, for he has excluded himself from the requirement of the benefit. Thereafter, dealing with another on the way to seeking personal benefit requires what he is ordered to do with respect to fair-dealing in the transaction, generosity in measuring and weighing, unqualified sincerity, relinquishing of all types of cheating, giving up of misappropriation, and not exceeding the legal bounds. Further, the transaction should not aid him in attaining what is disapproved of by the *shariʿa* in terms of sin and transgression, along with other matters in which a benefit is essentially not to accrue to the seeker. Thus, the matter in the seeking of benefit reverts to the absence of benefit.⁴¹

This is the case when a person stands aloof from the intentional seeking of his benefit; then what will be the situation when he separates himself from his benefit in his work? Just as it is not permitted to him to seek compensation, upon inquiry into the legality of acts, neither with respect to acts of worship nor with respect to practices, which is agreed upon, likewise in what becomes like these through intention.

Further, if such an intention is presumed, it cannot be conceived with the seeking of benefit. If this is the case, then it is included with the rule that when an obligation cannot be met without an act, the act becomes an obligation too. If it is established that he is required to do what implies the negation of benefit, then he is required to do an act without which the obligation cannot be met, irrespective of whether we say that it is required through a legal (*sharʿī*) demand or otherwise. It is the same whether the rule for it in general is the rule for an act in which there is no benefit at all. This is obvious. The Lawgiver

has desired sincerity through a certain demand, because He has deemed it a fundamental of the religion due to the words, “Religion is sincerity”,⁴² and by issuing warnings about it on different occasions. If we assume its dependence on compensation or a worldly benefit, it will depend upon the will of one requiring sincerity and the one showing loyalty. This leads to the point that the demand is not certain.

In addition to this, sacrifice is recommended and the one who does so is praised. The fact that sacrifice will be made in return for compensation is something that cannot be conceived as sacrifice. The reason is that the meaning of sacrifice is the preference of the benefit of another over one’s own. This is not possible with the demand for a worldly benefit. The same is the case with all the remaining requirements in the area of practices and worship. This is an interpretation that is rational on the issue, and it is possible to issue a ruling this basis.

Second: for the second examination, we say that it falls back for its rule on the benefit itself. The reason is that the Lawgiver has established the benefit for this actor, and has considered him prior to other persons so much so that if he wishes to keep all for himself he would be within his rights to do so. He also has the right to store it for himself or to spend it for his welfare in this world or for the sake of the Hereafter. It is a gift from God to him, how then can he not accept it? If he has taken it under permission and within the bounds of the *shari’a*, he has taken what has been deemed a benefit for him in so far as it has been assigned to him, and he has also taken something for which the formulation of intention is permitted to him.

Further, the limits set by the *shari’a*, even though there is no direct benefit in acting according to their requirements, are a means and a path towards his benefit. Just as no ruling for the object is given on the basis of the means – in whatever has preceded this issue with respect to a person’s taking something from an act that does not bear a benefit as it is a means towards a benefit like compensation – so also no ruling can be issued here for a person who has taken a benefit on the rule of means to a benefit.

We have found that from among the worthy ancestors (God bless them all) were many who used to store wealth for their personal welfare, and used to acquire through trade and other means an amount that they needed exclusively for themselves. Thereafter, they used to return to the worship of their Lord until what they had earned was spent, after which they again resorted to earning. They did not adopt trades or professions as a form of worship in this meaning, rather they restricted it to their personal benefits, even though they did this to avoid dependence and for the sake of undertaking worship. All this does not exclude them from the circle of those who seek their own benefits.

What has been mentioned earlier about the worthy ancestors is not ascertained in what has preceded for the validity of the interpretation that the purpose of these transactions was their personal benefit in so far as the

Lawgiver had established it for them. Thus, they acted for this world according to the benefits permitted to them, and they worked for the hereafter as well. All this is based upon the establishment of benefits, which is desired – the aim being that the benefits be those that are acquired within the limits prescribed by the Lawgiver without any transgression on the way.

Further, the limits for the way leading to benefits have been ordained so that man does not disrupt the welfare of others, as that will extend to his personal benefit as well. The Lawgiver did not lay down these limits for a reason other than that the interests (welfare) be secured in the optimum way for each person for his own account. It is for this reason that the Exalted said, “Whoever does good deeds benefits his own soul; whoever works evil, it is against his own self: nor is thy Lord ever unjust (in the least) to His servants.”⁴³ This is general for acts for this world and for the Hereafter. He also said, “Then any one who violates his oath, does so to the harm of his own self.”⁴⁴ A tradition says, after mentioning injustice and its prohibition, “O My Servants, it is your acts that I reckon for you and then I give you recompense for them.”⁴⁵ Texts like these are not specific to the Hereafter to the exclusion of this world; therefore, the calamities befalling man were due to his sins, due to the words of the Exalted, “Whatever misfortune happens to you, is because of the things your hands have wrought.”⁴⁶ He also said, “If then any one transgresses the prohibition against you, transgress ye likewise against him.”⁴⁷

The evidences for this are beyond reckoning. Man will continue seeking his benefit in such matters that are a means to the attainment of his benefit. If this is established, it becomes evident that this type is not equivalent to the first in preventing worldly benefits as a whole. It is, however, possible to reconcile the two methods, by saying that people in terms of acquiring their benefits are at several levels.

Among them are those who do not acquire them except through causation. They bring about an act or earn a thing, thus becoming agents of various types, in accordance with their ability, for the creation of Allāh. They do not store for themselves anything out of this. In fact, they do not deem anything a share for themselves out of this benefit. This is either due to the fact that they forget their own selves by shunning the share so that it becomes something that is to be forgotten, or it is due to the power of their faith in Allāh because He is aware of their state and in His hands is the kingdom of the heavens and the earth, and He is sufficient for them never giving a loss to them. It may also be due to the fact that they do not pay attention to their share in the belief that their sustenance is in Allāh’s hands, and He will prefer something better for them than what they prefer for themselves, or that they do not like to look at their share while looking at the right of Allāh. There may be other objectives too that are in front of those who have attained spiritual advancement. It is about such people that it was revealed, “But give them preference over themselves, even though poverty was their (own lot).”⁴⁸

It is transmitted from ʿĀʾisha (God be pleased with her) that Ibn al-Zubayr sent her wealth in two bags – the narrator says: “I think they were a hundred and eighty thousand (*dirhams*). She asked for a tray, and on that day she was fasting. She started distributing the money among people and by the evening not a single *dirham* was left. In the evening she said, “Girl! Bring me something to break my fast.” The girl brought her bread and oil. She said to her, “Were you not able to buy meat with a *dirham* out of the *dirhams* you have distributed so that you could break your fast with it?” She replied, “Do not torment me; had you reminded me I would have done so.”⁴⁹

Mālik (God bless him) has recorded that a poor man sought alms from ʿĀʾisha (God be pleased with her). She was fasting and did not have anything besides a loaf. She said to her maidservant. “Give this to him.” She said, “You will have nothing to break your fast with.” She replied, “Give it to him.” The maidservant said, “I did so, but when it was evening someone from the Ahl Bayt, or those who used to send gifts to us, sent a lamb leg roasted with batter. ʿĀʾisha gave it to me saying, ‘Eat of this; it is better than the flat loaf you made.’”⁵⁰

It is related about her that she distributed seventy thousand (*dirhams*) when she herself had torn clothes, and she sold what she possessed for one hundred thousand *dirhams* and distributed the money. Thereafter, she broke her fast with barley bread. This resembles the state of one having authority to govern part of the kingdom; he does not take anything except from the king, for he has firm faith in the distribution and strategy of Allāh in comparison to his own strategy. There can be no objection to this status in the light of what has preceded, because the one who has such status views Allāh’s strategy to be better than his own strategy for himself. If he starts planning for himself, he is reduced to a rank lower than the one he was enjoying. These are people with advanced spiritual attainments.

Among them is the person who reckons himself to be like an agent having authority over the property of an orphan. If he is affluent, he abstains from taking anything, but if he is poor, he takes just what is reasonable (*maʿrūf*). Whatever is besides this, he spends just like the wealth of the orphan is spent for his welfare. In this state, he is free of the desire to take from this property. He spends where it is necessary to spend, while he refrains from spending where it is necessary not to spend. If he needs something, he takes to an extent that is sufficient in accordance with what is permitted to him without being extravagant or stingy. This too is like being free of the acquisition of benefits in this form of livelihood. If he takes a benefit, he has preferred himself over another. But he does not do this; rather, he deems himself to be like other human beings. It is as if he is the distributor for human beings, who counts himself as one of them.

In the *Ṣaḥīḥ*, it is narrated from Abū Mūsā al-Ashʿarī, who said, “The Messenger of Allāh (pbuh) said, ‘The Ashʿariyyīn, when they are short of

rations in battle, or when, in the city, the food for their families is inadequate, they gather what they have in a cloth and then distribute it among themselves in a single utensil. They are of me and I am of them.’”⁵¹ In the tradition of the brother bond between the Muhājirūn and the Anṣār this co-operation is found.⁵² The Prophet (pbuh) used to something similar in battles, and it is well known.⁵³ Sacrifice is praiseworthy and does not conflict with the saying of the Prophet (pbuh), “Spend on yourself and then on those who are dependent upon you”;⁵⁴ rather, it is equally applicable in both situations.

Such persons and those before them did not restrict themselves with worldly benefits. What they took for themselves was not counted as striving for gain, due to the obvious implication of the intention, which is that one should give preference to oneself over others, but they did not do this; rather, they preferred others over themselves or considered themselves equal to others. If this is established, these people stand absolved of all claims of seeking benefit. It is as if they considered themselves to be persons for whom no benefit is assigned. You will find them – in hiring and trade – taking the minimum of profit or wages, so much so that the effort made by one of them was really for another and not for himself. Consequently, they displayed more loyalty than was binding on them, because they were agents for the people and not for themselves. Where then is the benefit here? In fact, they viewed their personal possessions, even though permitted to them, to be a symbol of cheating others. There can be no doubt that these people are to be linked for purposes of the legal rule with the first type, by virtue of their creating an obligation for themselves and not through a legal obligation that was imposed initially.

Among them are those who did not reach the level of the people described above. They took from their duty what was permitted to them in accordance with the permission, while they denied themselves what was forbidden, confining themselves to spending on all that they needed. Considered in the light of the preceding, they are like those who work for their benefits, but for benefits acquired in a valid way. Suppose it is said about such people that this amounts to abstention from benefits, then it is said from the perspective that they did not acquire them merely in the pursuit of their whims. In truth they avoided what another, who flouts commands and prohibitions, takes, which is benefit that is blameworthy, as it does not stop at the limits, rather the taker continues to walk like a beast driven by its physical urge. There is nothing to be said about this. The discussion is about the former who does not work except for himself. He is not to be assigned the rule of one authorized to manage the welfare of the Muslims in general; rather, he has authority over his own welfare and from this aspect he is not part of a public authority. Public authority is devoid of benefits, and the proper thing, Allāh knows best, is to say that people in this category work according to the rule that they intended the seeking of benefits. This is permitted to them as against the first two types,

who are ones who do not take according to causation or are one who do so, but in proportion to the (general) distribution and so on.

The Fifth Issue: Securing the Essential Interests

If an act is undertaken in conformity with the *maqāṣid al-sharīʿa* (purposes of law), then it is undertaken either in conformity with the primary purposes (intentions) or in conformity with the secondary purposes (intentions). Each one of these divisions is subject to examination and analysis into sub-issues. For each division, we will raise an issue. If the act is undertaken in accordance with the primary intentions – that is, that they have been taken into consideration – then there is no problem about its validity and soundness in the absolute sense, in so far as it is free from personal benefit and in as much as the benefit has been taken into account. The reason is that it is undertaken in accordance with the intention of the Lawgiver underlying the essence of legislation, and as has already been said the legal purpose of the law is to take the subject out of the pressures of his own whim so that he can be the servant of Allāh. This is sufficient here.

On this assumption are based several principles and many issues of *fiqh*:

Among these is the rule that when the primary intentions are taken into account it is closer to the act being purified and becoming an act of worship, and it is removed from being a participation in benefits that alter its form of being pure worship.

The elaboration is that it is not obligatory that the benefit of a person be taken into account in so far as it is a benefit. It is based on our statement: The affirmation by the law and the permission of having recourse to benefits is merely a favour granted by Allāh, because it is not obligatory on Allāh to take the welfare of the servants into account. It also conforms with the rational obligation. Thus, the mere intention to comply with the command, prohibition or permission is sufficient for attaining the objective; therefore, the addressee of the communication of the Lawgiver who acts in accordance with it is responding positively to the communication. He is free from seeking benefits, and his act occurs in accordance with the necessities and what surrounds them. Thereafter, his benefit is included in the whole; rather, it is preferred over the benefit of others.

If a person seeks livelihood in response to a command, or in consideration of the underlying case of the command, which is the intention to preserve life as a whole and to eliminate the evil affecting it, then this⁵⁵ has priority under the law: “Begin with yourself and then those who depend on you.”⁵⁶ The undertaking of the act may be one that brings about the fulfilment of an obligation, for example. Thereafter, his investigation into the obligation may be confined to some persons to the exclusion of others, like a person who undertakes the preservation of his own life in so far as he is obliged to do so, or it may be confined to those under his supervision. His view may be widened

and he may earn for the preservation of whomever Allāh wants to be preserved. This is the most general of meanings, the most praiseworthy, and one that is to be granted a reward. The reason is that in the first case many of the concerns are lost, for his subsistence may come from a source he did not intend, or he may have intended something other than what he acquired, even though it does not harm him, and in this he did not place his strategy in the hands of his Lord. As for the second case, he placed his intention and act in the hands of One who has power over all things, and he intended that with his small effort great numbers of humanity, who cannot be reckoned, may be benefited. This is the ultimate in the search for the devoted act of worship, in which nothing of his own benefit is lost.

The above is different from the consideration of the secondary intentions, in which most of these advantages or all of them are lost. Thus, for example, he may intend the elimination of hunger, thirst, cold, the satisfaction of desire or permitted pleasures in their pure form without admitting other concerns. This, although it is permitted, does not amount to an act of worship and it is something in which the primary intention of the Lawgiver has not been taken into account, and it is withdrawn from it.⁵⁷ If the intention of the Lawgiver had been taken into account, the act would have amounted to obedience, in which case it would have been in response to the requirement of the communication of the Lawgiver, as has preceded. As such intention has not been taken into account, the act remains the exclusive consideration of personal benefit. This is one view.

The second view is that the primary purposes relate either to the command and prohibition alone without concern for anything else, which without doubt is compliance with the command and obedience to what he has been commanded to do and nothing else, or it is obedience to what has been understood from the command – that is, he is a servant who has been employed by his master to work for the servants. He has made him a means and a cause of attaining their needs as they wish. This does not exclude it from the consideration of the mere command, for he is merely performing an act of worship, by suspending his benefit in it. It is as if the master is taking care of his benefit. It is distinguished from the case of the person who is pursuing his benefit alone, for he is not acting upon it as if it were a mere command, nor from the perspective of the underlying meaning of the command; rather, he is acting from the perspective of the acquisition of his personal benefit or the benefit of one in whom he is interested. If he obeys the command, it is from his personal perspective. Sincere devotion in its real sense is missing in his case, and performing the act as one of worship is negated in his case. If he does not obey the command, the intention to perform an act of worship is missing altogether what to say of being devoted in it. He takes the command and prohibition in the ordinary sense and not as those of worship. If his personal benefit dominates his intention, it amounts to a deficiency.

The third view is that one abiding by the primary intention is doing so under an extremely heavy burden. Bearing a heavy burden through an obligation does not usually indicate that one who is bearing it is doing so for his benefit; he would rather seek his benefit through something that is lighter. The reason is that the command creates a situation that is imposed upon the subject whether he likes it or not. Allāh guides to this his servant whom He has chosen for nearness. It is for this reason that prophethood was the heaviest of burdens and the greatest of obligations. Allāh the Exalted has said, "Soon shall We send down to thee a weighty Word."⁵⁸ Something like this does not take place without special additional selection, as distinguished from a person seeking his benefit. He is acting for his own benefit, and one acting for his Lord and one acting for himself are not equal. The first is bearing a burden, while the other is working on his own. Thus, you will rarely find a person, who is seeking his benefit, occupied with a burdensome obligation. If you do find someone who is in this state then ask him about the objectives of those who have attained this (higher) station. If he meets those requirements, he is one of them; otherwise you will know that he is making false claims. If it is established that one pursuing the primary goals is overburdened, then this is the consequence of selection. The person following his own benefit is not burdened with such duties, except to the extent that his personal gain has become deficient. If, however, his personal benefit is suspended, his intention in pursuing the primary intention is established, and selection is affirmed in his case, thus, his acts become acts of worship.

Suppose it is said: It is often that we see most people, who are acting for their own benefit, reaching a high status among men of religion. In fact, it has been reported about the Chief of the Prophets (pbuh) that he used to like perfume, women, sweet things and honey, and goat foreleg, and water was sweetened for him, along with other things that a matter of personal preference. If he did not deny himself what he liked out of permitted things, rather used them when he found them, yet he reached the highest status in terms of religion. Along with this, he was the most pious of people and the most intelligent, and the Qur'ān was his morality. This is one aspect of the issue.

We also see many who have waived their own benefit and work for others or for the welfare of the servants in accordance with the determined requirements, and they are sincere in their work. Despite this, they do not have that status in terms of the Hereafter, like many Christian monks and others who have devoted themselves to piety by cutting themselves off from the world and their families. They do not concern them nor does their thought cross their minds, and they have taken worship and struggle to mean service for the needs of the people as a habit and practice, so much so that they have become symbols among people. All that they had been doing is based upon something that is purely a nullity. Between these two points are innumerable links that bring them closer to the two parties.

The response is given in two ways:

First: what you have conceived are the apparent things, while the unseen aspects of things do not become known. Examine what was said by Iskāf in *Fawā'id al-Akḥbār* about the words of the Prophet (pbuh), “From your world three things have been made dear to me ...”,⁵⁹ and a meaning different from what you have imagined will become apparent to you on this point with the mere acquisition of benefit moving towards the pure truth. This indicates that deemed prayer to be one these three things, which is the foremost of the acts of worship after the expression of faith. On the same lines, the other things besides it can be explained.

Further, it does not necessarily follow from the love of a thing that it is desired for a benefit, because love is an internal matter that cannot be taken into possession; it is witnessed in acts from which it arises. How then can you say that the Prophet (pbuh) used to utilize these things for mere benefit and not because they were permitted? This is the essence of being free from the seeking of benefit. If this is evident in the case of the greatest model (pbuh), the same becomes evident in the case of each follower whose authority became well known.

As for the discussion about the monks, we do not concede that it (their act) was devoid of benefit; in fact it was the very essence of benefit and destruction in the pursuit of whims. The reason is that a person sometimes gives up his benefit in one thing for a benefit that is higher than the first, just as you see people spending wealth for the attainment of rank, because the personal benefit in rank is greater. They exert themselves in the seeking of authority until they die doing so. The same is the case with monks: they give up the pleasure of the world for pleasure of authority and honour, for these are greater. The benefit of being famous, of honour, gaining authority, respect and rank that is ingrained in human beings is the greatest of benefits, which renders the assets of this world insignificant and trivial. This is the first prohibition within our issue; therefore, there is no discussion about one who is concerned with such things. It is for this reason that it is said, “The love of authority is the last thing to move out of the heads of the true devotees.” They spoke in truth.

Second: the demand for benefits is sometimes free of (the desire for) benefits, while at other times it is not. The difference between the two is that the motive for demanding them in the first place may or may not be due to the command of the Lawgiver. If it moves from the command of the Lawgiver, then such a benefit is free of desire and is pure, because in such a case the self moves down to concern for others. Just as it is free of a desire for benefit in working for the welfare of others, it is free in working for his own interests. This is in conformity with the primary intention. This is the state of the person who has been mentioned in the question. Something like this is not counted as a benefit, nor striving towards it in conformity with the intention. The reason is that the secondary intention, when it is being urged on by the primary

intention, becomes an offshoot of the primary intention and is assigned the same rule. If, however, it is not structured upon the primary intention, it becomes striving for personal benefit, and what we are discussing does not relate to it.

As for the state of the monks and those who resemble them, they acquire this state even though it is defective in its formation. They seclude themselves in churches and in cells, giving up desires and pleasures, and they suspend their benefits so that they can devote their attention to the one they worship. They work to their utmost seeking forms of nearness to the object of worship. They do not believe that it is a means towards it (benefit), and they deal with the people and with themselves exactly in the same manner in which one established in matters of religion does. I do not say that they are not sincere. In fact, they are sincere towards what they are worshipping, and they turn with sincerity towards those they deal with, except that all that they do is turned against them. Allāh will not benefit them with any of this in the Hereafter, because they have built on what is not a (true) foundation, “Some faces, that day, will be humiliated, labouring (hard), weary – while they enter the blazing fire.”⁶⁰ Protection lies with Allāh.

Even lower in rank than them are the innovators and the misguided from among the members of this nation. It is known about the Khawārij by derivation from what was said about Dhū al-Khuwayṣra, “Let them be. They have companions in comparison with whose prayer one of you will consider his prayer trivial, and the same is the case with your fasts in comparison with their fasts ...”⁶¹ He informed us that they have forms of worship that are apparently highly respected and states that are deemed a matter of esteem, but they are based upon something that is not a (true) foundation. He therefore said about them, “They will depart from the religion just like an arrow departs from the bow.”⁶² The Prophet (pbuh) ordered that they be slain.⁶³ Among the people who follow their whims are many who are in this category.

On the whole, sincerity in acts becomes sincerity by the shunning of benefits. If, however, the seeking of benefits is based upon a valid foundation it becomes a means of success in the eyes of Allāh. If it is based upon a corrupted foundation, then it is the opposite. It is often found in the people of love. One who surveys their states will find the shunning of benefits and sincerity in acts for the sake of One whom they love in the most complete manner that is possible for a human being.

Accordingly, it becomes obvious that laying the foundation upon the primary intention is closer to sincerity and if it is built upon secondary intentions it is closer to its absence, but it does not negate it.

Sub-Issue: Worship

It also becomes evident here that structuring acts upon primary intentions turns all the transactions of the subject into acts of worship, whether these are actual

acts of worship or practices. The basis is that as the subject comes to understand the purpose of the Lawgiver in establishing the affairs of the world and acts in accordance with the requirements of what he has understood, performing acts in the manner they are demanding and relinquishing acts when relinquishment is demanded, he is perpetually supporting creation in intending the implementation of interests with his deeds, speech and heart.

In his speech, he does it through sermons and the remembrance of Allāh to the effect that the people be obedient with respect to what is intended and not disobedient. He also gives instruction that is needed by them for the correction of their purposes and acts, just as he does it by commanding the good and prohibiting evil, as well as by invoking blessings for benefactors who do good and ignore their sins. In his heart, he does not intend evil for them, rather he intends blessings for them, identifying them through their better traits that they exhibit even if that is just Islam. He grants them respect making himself humble with respect to them, along with all other matters of the heart that concerns subjects. In all this, he does not confine himself to the human species, rather includes in his affection all animals so that he treats them in a manner that is good, which is indicated by the saying of the Prophet (pbuh), “Through every tender living being there is a reward.”⁶⁴ There is also the tradition about the woman torturing her cat by tying her,⁶⁵ along with the tradition, “Allāh has prescribed the doing of good for each Muslim; therefore, when you slaughter, do it in the best (swift) way.”⁶⁶

Accordingly, one who acts according to the primary intentions acts upon himself in obedience to the command of his Lord, and follows His Prophet (pbuh). How then can his transactions undertaken in this manner not all be acts of worship? This is different from one who works for his own interest. He always turns to what is his interest or is a means to securing his own interests. This does not amount to worship at all; rather he is performing all those permitted (*mubāḥ*) acts even when they do not disturb the right of Allāh or the right of another individual. The *mubāḥ* does not turn into an act of worship of Allāh, and if we consider it prescribed for a person then such a person would be acting upon what has been commanded by the Lawgiver. In such a case it would be an act of worship exclusively for him. If you consider it prescribed in this way, it is excluded from the requirements of his personal interest in this respect.

Sub-Issue: Building upon the Primary Purposes

Building acts on the basis of the primary intentions usually transfers acts to the domain of obligation, because the primary intentions revolve around the rule of obligation (*wujūb*) in so far as they act to preserve the necessities in a religion of agreed upon duties. When this is the case, the acts that lie outside the domain of private interest revolve around general interests, and it has preceded that an act that is not obligatory becomes obligatory if viewed through the universal.

The person here is acting through the universal⁶⁷ on something that is recommended (*mandūb*) by the particular, or is permitted, whose disruption can lead to the disruption of the system; he therefore comes to act upon the obligatory.

As for building upon secondary intentions or purposes, it is structuring upon a particular interest, where the particular does not give rise to obligation. Therefore, the act is permitted either through the particular, or through the universal or through the particular and the universal operating together. The permitted by way of the particular may either be disapproved of or prohibited by the universal. The elaboration of all this has preceded in the *Book of Aḥkām*.

Sub-Issue: Adopting the Primary Intention in All Its Purity

In this issue is the fact that when the subject adopts the primary intention, it includes whatever is intended by the Lawgiver through acts in order to secure interests or repel injuries. The person acting upon this has formed the intention in response to the command of the Lawgiver. He does this either after understanding what He has intended or by merely obeying the command of the Lawgiver. On both counts, he intends what is intended by the Lawgiver. When it is established that the intention of the Lawgiver is the most comprehensive, primary and preferable intention, and that it is a pure light that is not mixed up with personal gain or profit, the one receiving it in such a form takes it in its pure, sufficient and complete form without any adulteration or deficiency in the purpose of the Lawgiver. It is then suitable that the reward too be awarded to the subject in the same manner.

As for the secondary intention, all these consequences do not follow from it, because adopting a command or prohibition for personal gain or undertaking an act for profit makes the absolute intention deficient and restricts its generality. It therefore does not amount to the former.

The testimony for this is provided by the principle, "Acts are determined by intentions"⁶⁸ and the saying of the Prophet (pbuh), "Horses may be a source of reward for one man, a shelter for another, and a burden for the third. The man for whom the horse will be a source of reward is one who employs it in Allāh's Cause, tying it with a long rope in a pasture or a garden. He receives blessings for what the horse consumes, up to the length of rope, in the pasture or the garden. If the horse breaks loose (of its rope) and crosses a hill or two, then all its steps and dung will count as blessings for the man. If it passes by a river and drinks from it, even when the man did not intend that it drink, it will all be counted as blessings for the man."⁶⁹ Thus, it is a source of blessings, in this meaning of the tradition, for the person who forms the primary intention, because he intends to employ it in Allāh's Cause, which is a public not a private purpose. His reward too, in his acts, will be general and not particular. The Prophet (pbuh) then said, "For the man who employs it for livelihood, to be free of want, without forgetting the right of

Allāh⁷⁰ during such use and the emergence (of the right), it is a shelter.”⁷¹ This is the case of the person who seeks private gain that is praiseworthy in its intention for something personal, which is his profit. The rule for this is confined to what he intended, which is shelter, and the intention formed by him is secondary. The Prophet (pbuh) said after this, “The person who keeps horses as prized possessions, for showing off, and for harming the Muslims, then his horses are a (spiritual) burden for him.”⁷² This is gain that is condemnable, as it is derived from the principle of the pursuit of whims, and it is not relevant to the discussion here.

Acting according to the primary intention is similar to following the Messenger of Allāh (pbuh) in his acts, or the following of the Companions and their Followers (God be pleased with them all). The reason is that what they intended is included in the intention of the follower. This is evidenced by the transference of the intention of the follower to the intention of one who is followed, as is found in the statements of some of the Companions (God be pleased with them), “I am putting on the *iḥrām* for the purpose that the Messenger of Allāh (pbuh) put it on.”⁷³ Thus, it was a proof for the rule, and it is the same for other acts.

Sub-Issue: Complete Obedience and Reward

It is to be concluded from this that when an act is performed in accordance with the primary intention, it turns into most perfect obedience, but when this is opposed it becomes the worst type of disobedience.

As for the first, the person acting in accordance with it is working for the securing of public interests for all creation and striving in their defence in the absolute sense. The reason is that he either intends to act out all this or he finds deficiency in himself to obey the command that falls under his intention, which is all that the Lawgiver has intended through His command. If he undertakes to act, he is to be rewarded for each life that is revived and for each interest that he intended to secure. There is no doubt about the loftiness of this act; therefore, it is included in the revival of life and is as if he revived the whole of mankind. Everything in the whole world seeks forgiveness for him, even the whale in the water. This is different from the situation where he does not act in accordance with the intention, for in this case his reward reaches the level of his intention alone, because “acts are determined by intentions.” Thus, when his intention is general his reward is great, but when his intention is not general the reward is in proportion to what he intended. This is evident.

As for the second, the person acting in opposition (to the intention of the Lawgiver) is acting for the disruption of the public good, and is confronting the person working for the betterment of the public good. It has already preceded that the intention to work for the public good increases the reward. Consequently, for the person acting in opposition to this the burden (of

torment) is enhanced. It is for this reason that for the first son of Adam there is the burden of anyone who kills a protected human being, because he was the first one to lay down the practice of homicide. Anyone who kills a human being is considered to have killed all mankind. "Anyone who lays down an evil practice bears its burden and the burden of one who acts upon it."⁷⁴

Sub-Issue: Obligations Based on Primary Purposes

This leads to another principle, which is that when you follow up the foundations of obligation and their principles you will find them relying on the primary purposes, while the major sins, when examined, are found to be opposing these purposes. This will become evident to you upon examining the major sins, laid down in the texts, as well as acts related to them through analogy. You will find them to be consistently so, God willing.

The Sixth Issue: Securing the Secondary Interests

When an act conforms with the secondary intentions (purposes), it may or may not be accompanied by the primary intentions. The first is like acting in obedience without ambiguity,⁷⁵ while the second is acting for personal gain and purely in pursuit of whims. The accompanying of the primary intentions is first through acts, the example of which is a person's saying, "This is food, this apparel and this something that can be touched, and the *shar'* (law) has permitted me to utilize them; therefore, I am utilizing⁷⁶ the permitted (*mubāḥ*) and I work to acquire it, because it is authorized." The accompaniment may then be potential, the example of which is that he brings about the cause of this permitted thing on the basis that it is authorized, but the permission itself does not cross his mind, and all that he is concerned about is that he will reach his objective through such and such means.⁷⁷ When he reaches it through the identified means, the act acquires the rule of the first type if the permitted thing is acquired through a means that is itself permitted. The accompaniment (of the primary purposes), however, is preferable in the first case. What is not permitted⁷⁸ also runs the course of the two situations.

When this is established, the elaboration of his undertaking an act for gain and through obedience consists of two things:

First: if it had not been so, it would not be permitted to any person to undertake normal transactions, unless the intention in his transaction was based on pure obedience to the command, and that there was no striving for personal gain nor an intention to do so. It would also prevent one under duress from consuming carrion⁷⁹ without invoking such intention and to act upon the intention devoid of personal gain. This is not correct by agreement. Allāh and His Prophet (pbuh) have not commanded anything of the kind, nor have they prohibited the formulation of an intention of personal gain, under any

circumstances, in ordinary acts, or even conformity with the intention of the Lawgiver in the exclusive sense of not associating others in it, or not turning to one other than Allāh for it. This shows that if the intention to seek gain in acts is ordinary, it does not negate the basis of acts.

Suppose it is said: How is conformity to the intention of the Lawgiver of pure devotion and the absence of associating with Him be brought about for ordinary acts? The response will be: The meaning of this is that acts be undertaken in a manner that is in conformity with the requirements of legality. The person is not to intend an act at the times of the Jāhiliyya, nor indulge in a devilish invention, nor undertake an act that does not resemble that of the people of the faith, such as the drinking of water or honey in the form of wine, and the consumption of what is prepared for the religious celebrations of the Jews and Christians even if prepared by a Muslim, or to slaughter in a manner that resembles the forms of Jāhiliyyah, as well as other acts that are meant to embrace polytheism.

This is similar to what is in the narration of Ibn Ḥabīb from Ibn Shihāb that Ibrāhīm ibn Hishām ibn Ismāʿil al-Makhzūmī that he had a well (spring) dug up. On the appearance of water, the engineers said to him, “If a sacrifice is offered over it, the well will be protected from going dry or from collapsing, thus, killing someone.” Camels were slaughtered over it and when the water was made to flow, it was mixed up with the blood of animals. He ordered the preparation of food from it for himself and for his companions. He and his companions ate of it and he distributed it among all the workers. Ibn Shihāb said, “It was a very bad thing that he did. It was not permitted to him to make the sacrifice or to eat from it. Had the report not reached him that the Messenger of Allāh (pbuh) prohibited slaughter for the Jinn?”⁸⁰ The reason is that such acts, even though the name of Allāh is pronounced over them, resemble what is slaughtered for idols as well as all that is sacrificed for other than Allāh.

A similar prohibition is found in the “sacrifices of the Bedouins”, in which two men would compete in sacrificing camels (one after the other), with each trying to surpass the other and the one sacrificing more camels being the better (more generous) person. It was prohibited to consume such sacrificial meat as it was in a name other than Allāh’s. Al-Khaṭṭābī has said that similar to this is the practice of the people to slaughter animals in the presence of kings and chieftains when they visited different lands, upon the occurrence of recurring events,⁸¹ as well as other occasions. Abū Dāwūd has recorded that the Prophet (pbuh) forbade the consumption of food offered by two sacrificing competitors,⁸² and these were competitors who wanted to be seen as the greater of the two. This and what is similar to it was prescribed for slaughtering with the pure intention of consumption. When an excess over this intention was found, it amounted to polytheistic intervention in what was legal, with a share for one other than Allāh. *Fatwās* were issued in the light of this by Ibn ʿAttāb

in forbidding the consumption of meat of *Nayrūz*, and he maintained that it is a sacrifice made for something other than Allāh. This is a very wide category.

Second: if the person forms an intention for personal gain that negates the ordinary acts – the undertaking of obligations and all forms of worship would be in the hope of entering heaven or out of fear of entering the fire – they would be acts without legality. This is most certainly a nullity, which nullifies what depends upon it.

The explanation of dependence is that the search for heaven and fleeing from the fire amounts to striving for personal gain, which is no different from seeking benefit from what has been permitted to him by the Lawgiver and authorized by Him in so far as it is a matter of personal gain, although one of them pertains to the temporal and the other to the Hereafter. The immediate and the delayed in this issue are mutually exclusive, just as there is no compatibility between the immediate and the delayed in this world. When the seeking of delayed personal gain is permitted, the seeking of personal gain that is immediate has a higher priority.

As for the nullity that is next, the *Qurʾān* has laid down that whoever performs (good) deeds will be rewarded as reflected in “Do good deeds and you will enter heaven”, “Relinquish such and such act and you will enter heaven”, “Do not do such a thing or you will enter the fire” and “Whoever does this will receive such and such recompense.” All this, without doubt, is inducement to seek personal gain through acts. Had the seeking of personal gain through acts been objectionable, the *Qurʾān* would surely have mentioned what is blameworthy in acts. This is, therefore, a nullity by agreement. Likewise whatever is dependent upon it. Further, the Prophet (pbuh) used to be asked about acts that would take one to heaven and keep one away from the fire, and he informed them about the seeking of personal gain without fear or apprehension. Allāh, the Exalted, has said: “We feed you for the sake of Allāh alone: no reward do we desire from you, nor thanks. We only fear a Day of frowning and distress from the side of our Lord.”⁸³ A tradition says, “Your comparison with the Jews and Christians is like a man who hired a group ...”⁸⁴ This tradition is explicit in the permissibility of working for personal gain. In the tradition of the *bayʿa* (oath of allegiance) of the *Anṣār*, they said to the Prophet (pbuh), “Lay down the condition for your Lord and for yourself.” When he (pbuh) had done so, they said, “And what is there for us?” He replied, “heaven.” On the whole, these evidences are more than can be counted, and in all these there is inducement to act for personal gain. This is so even if it is not said, “Work for this”, and it is said, “Work and you will have this.” If such an approach is not blameworthy for purposes of acts of worship, it is obvious that it is not blameworthy for practices.

Suppose it is said: In fact, such an approach in acts is blameworthy on the basis of texts and rational arguments. As for the rational evidences, acting for personal gain renders a person’s personal profit as his purpose and the act

a means to it, for if it was not his purpose it would not be required through deeds. This is what we have assumed, and this is what is in the background. In the same way if the act⁸⁵ is not a means the personal gain will not be sought through it, and we have assumed that he undertakes the act so as to reach something else through it, which is his personal gain. With reference to this personal gain it is a means. It has been established that means, in so far as they are means, are not desired for themselves; they are subsidiary to the purposes, so that if the purpose is dropped the means too is dropped. And, if we reach the purpose without it, it is not the means; if we assume the absence of the purposes as a whole, the means cannot be taken into account, rather they are futile. If this is established, the prescribed acts, when they are undertaken to reach personal gains, become something other than ritual obedience except to the extent of personal gain, and it is personal gain that is the purpose of the acts and not ritual obedience. They come to resemble worldly acts done for the benefits of this world like authority, power, wealth and what is similar to these. Acts that are authorized are all suitable for ritual obedience when they are undertaken for the reason that they are authorized. When they are undertaken from the perspective of personal gain, the perspective of ritual obedience present in them is extinguished. The same applies to the undertaking of acts that are commanded and that are intended for ritual obedience, like prayer, fasting and those in the same category. It is essential that the aspect of ritual obedience become extinguished in them (when done hypocritically). Every act – whether an act of worship or practice – that is commanded carries an element of personal gain in it. When it is performed with this element in view, and not for ritual obedience, the element of worship is extinguished. The element of worship in it is disregarded, and ritual obedience is dropped. This is the meaning of saying that an act is not valid.

In addition to this, in this commanded or prohibited act, in which there is personal gain for him – and I wish I knew how it could be made free of personal gain – is it not binding on the subject to comply with ritual obedience to Allāh in response to the commands and prohibitions? When it is known that it is binding on him, then the commanded and prohibited acts, by necessity, are purposes in themselves and not the means. This is what is indicated by the poet: “Assume that the Prophet had not been sent to us and the infernal fire had not been kindled. Is it not obligatory on the subjects to rightfully sing the praises of the Benefactor?” He means thereby the obligation of the law. If it is deemed a means, it moves out from the category of the legal, and acting upon the commands and prohibitions becomes something not intended by the Lawgiver. An intention in opposition to the intention of the Lawgiver is a nullity, and an act based upon it is a nullity. An act based upon personal gain is the same.

Accordingly, it is established that the servant does not have a claim against God with respect to his person, nor does he have any argument against Him.

It is not obligatory on God to feed him, to give him to drink, or to shower blessings on him. If He were to torment the creatures of the heavens and the earth, it would be His right on the basis of ownership. "Say: 'With Allāh is the argument that reaches home.'"⁸⁶ If there is nothing for the servant other than ritual obedience, it becomes his duty to perform the act without seeking personal gain. If he seeks personal gain through his act, he is not satisfying the right of the Master, but acquiring his own gain.

As for the texts that indicate the validity of this concept, they are verses and traditions conveying the exclusive devotion of acts for Allāh. They also convey that acts not performed purely for Allāh are not accepted by Allāh, as in His words, "And they have been commanded no more than this: to worship Allāh, offering Him sincere devotion"⁸⁷ and "Whoever expects to meet his Lord, let him work righteousness, and, in the worship of his Lord, admit no one as partner."⁸⁸ A tradition says, "I am free of the partners in *shirk* (associating partners with God)."⁸⁹ Then there is the tradition which says, "A person who migrates towards Allāh and His Messenger, his migration is towards Allāh and His Messenger, but one who migrates towards this world to find its bounties, or towards a woman he wishes to marry, then his migration is towards what he migrated to."⁹⁰ This means that there is no element of ritual obedience to Allāh in the following of the command for such migration. In each act that can be rationalized or that cannot be rationalized is an element of ritual obedience, which he brings about if Allāh so wills. Thus, one acting for his own gain loses something of this element of ritual obedience. It is for this reason that a group of the earlier ancestors were called those serving what is bad or the slaves of what is bad. There is something in earlier reports about this, and the entire meaning has been gathered in the words of the Exalted, "Truly, sincere devotion is only for Allāh."⁹¹

Further, some jurists included within this category things that diminish devotion and undermine acts. Al-Ghazālī said, "Every benefit out of the benefits favoured by a person, towards which the heart is inclined, whether this inclination is less or more, when it is accessed through acts its clarity becomes murky, and the devotion of the actor diminished." He said, "Man is engrossed in his benefits and immersed in his desires. It is rare that his various acts and rituals be found separated from his immediate benefits and purposes."⁹² It is for this reason that in the life of a person, even if he preserves one moment purely for the sake of Allāh, he has found success. This is due to the high status of sincere devotion, and the difficulty of freeing the heart of temptations. In fact, the pure act of devotion is one that has no motive other than seeking nearness to Allāh." He then said, "Sincerity of devotion, without doubt, is the ridding of acts of these temptations, whether they are more or less, so that the intention of seeking nearness is refined, with no motive being left other than this. This can only be conceived in the case of a person who loves Allāh without restraint, one who is engrossed in the Hereafter so that

he is not content with, or settled in, this world. He does so to an extent that he is no longer inclined even towards eating and drinking, with his interest in them being similar to answering the call of nature towards which he is compelled as it is a necessity of life; thus, he does not desire food in so far as it is food, but for the reason that it gives him strength to undertake worship. He hopes that the evil of hunger will be kept confined so that he will not feel like eating, and in his heart there will be no desire for things that are extra to necessity. A certain amount of necessity is required by him only because it is a religious necessity. He therefore has no concern other than that for Allāh the Exalted. This type of person, when he eats, drinks or answers the call of nature, maintains purity of acts and soundness of intention in all his states of motion and rest. When he sleeps, for example, he does so to give himself a rest that will strengthen him for later acts of worship, and in such a state his sleep becomes an act of worship, while he himself attains the status of the devotees. The door of devotion in acts for one who is not so is blocked except as a rare occurrence.” Thereafter, he discussed the rest of the issue. In *Iḥyāʾ*⁹³ he discusses this topic in a number of places, which will be available to one who peruses the content. If this is the case, then the actor turning to his personal gain all the time behaves in a manner that is contrary⁹⁴ to what has been stated above.

The response is: What the worshippers treat as worship is of two kinds. The first are the acts of worship whose primary purpose is seeking nearness to Allāh. These are like *imān* (faith) and its subsidiary acts along with the fundamentals of Islam as well as the remaining acts of worship. The second are customary transactions prevalent among the subjects whose adoption leads to the distribution of benefits in the absolute sense, and whose opposition leads to the spread of injuries in the absolute sense. These transactions have been made lawful for the acquisition of benefits and the repelling of injuries. This is the kind that is temporal and whose meaning can be rationalized. The first kind represents the right of Allāh over the servants in this world and the legality of benefits and repelling of injuries in the next world.

As for the first (kind), the benefit desired is either worldly or pertains to the Hereafter. If it is of the Hereafter, then this benefit has been established by the *shariʿa* in accordance with what has preceded. As it has been established by the *shariʿa*, then desiring it in the manner it has been established is valid, as long as he does not transgress the bounds fixed by the Lawgiver, and he does not associate others with Allāh in whatever he undertakes nor does he intend His opposition. When it is understood that the Lawgiver has determined consequences for acts and the subject has intended the occurrence of consequences for his acts, then he is acting so that the consequences occur for him for the sake of Allāh alone, as required by the knowledge of the *shariʿa*. This does not result in an objection to the sincerity of his devotion, because he knows that worship is the means to salvation and acts are the

path leading to the nearness to Allāh as long as he has intended this and not something else. It is what the Majestic and Glorious has said: “Except the devoted servants of Allāh; for them is a sustenance determined, fruits – with honour and dignity bestowed – in gardens of delight.”⁹⁵ If the consequences are determined according to acts of devotion – where the meaning of devotion is not associating anyone else with Him in acts of worship (*shirk*) – then this person has acted according to such devotion. Desiring benefits is not *shirk*, because it is not the benefit that is being worshipped, rather the One in whose hands is the bestowing of the benefit who is being worshipped, and that is Allāh the Exalted. If, however, he associates another person with Allāh, under the impression that the granting of benefits is in his hand, then such a person has committed *shirk* in so far as he has associated another with Allāh for this benefit resulting from the act.

It becomes obvious that the intending of an otherworldly benefit in acts of worship does not negate devotion. In fact, if the servant knows that no one can deliver the benefit of the next world other than Allāh the Exalted, it becomes a powerful incentive for his devotion, due to his knowledge that no one else owns the authority.

Further, the servant does not cut off his search for his benefit, either of this world or of the next, as has been stated by Abū Ḥāmid (al-Ghazālī, God bless him). The reason is that ultimate benefit of the seeker is the blessing of the Hereafter when the Beloved is kept in view and His nearness is sought along with the delights of success. This is the greatest benefit; rather, it is utmost benefit in both worlds. The rewards of all this are bestowed on the servant, because All the Exalted is free of the wants of all the worlds. He said: “And if any strive (with might and main), they do so for their own souls: for Allāh is free of all needs from all creation.”⁹⁶

Consequently, it is rare that a human being will act solely in compliance with a command. Allāh, the Majestic, has ordered all to inculcate devotion, but devotion devoid of temporal and other worldly benefits is very difficult, and it is not attained except by the elect; this is rare. The requirement, therefore, comes very close to an obligation to do the impossible. It is an extreme case.

Some Aʿimmah (scholars) have said that the human being is not moved to action except for a benefit, and not being concerned with benefits at all is a divine attribute. Thus, whoever claims such an attribute is an unbeliever. Abū Ḥāmid (al-Ghazālī): “What they say is true, but the people⁹⁷ – and he means the Ṣūfīs – intended by this the relinquishment of what the people in general call benefits, and these are the lusts described in the context of heaven alone. As for the ecstasy attained through a knowledge of Allāh and salvation, along with a chance to see the face of Allāh, the Greatest, it is the benefit sought by these persons. These are not called benefits by the common people, on the other hand they wonder about such things.” He said, “If these persons were presented with these benefits of the blessings of heaven as compared to what

they are enjoying with respect to obedience, salvation, and secretly and openly witnessing the presence of the divine, they would look down upon such benefits and would not turn towards them. Their benefit is the One they worship and nothing else besides.” This is what he said, and it is the establishing of the greatest of all benefits. Yet, these people are of two types. The first type are those who seek the benefit in being foremost in complying with the command of Allāh. When something is commanded or prohibited, they respond prior to the coming of the benefit. Such persons act on the basis of compliance and not the benefits. The persons in this category have different grades, but the benefit does not affect their hearts, except in rare cases. There is no concern about the validity of the devotion of such persons. The second type consists of those for whom benefit precedes compliance. Thus, when they hear the command or the proscription, they immediately contemplate the compensation; fear and hope are foremost for them and they respond to the call of God for the benefit. This type has a lower status as compared to the first, but they too are sincere, because they are demanding what has been permitted to them, while they run away from what they have been asked to abstain from. As such their devotion does not become questionable.

Sub-Issue: Temporal and Other Interests

If the benefit sought through acts of worship is a worldly benefit, then that too is of two kinds. The first pertains to the improvement of appearances, creating a good impression on the people, and the belief that there is merit for the person undertaking the acts. The second kind pertains to the acquisition of benefits in this world. This again is of two types. The first pertains to what is specific to the person himself without the thought of concern of the people with the act, while the second pertains to such concern so that wealth, good reputation as well as other things may be acquired. This yields three kinds in all.

The first pertains to the creation of a good impression in the eyes of the people and the belief of merit in acting. If this is the primary purpose then there can be no doubt about its being for appearances, because the actor is driven to acts of worship with the intention of seeking praise and to be seen as good. In attaining this, his obligatory and supererogatory worship is also accomplished. This is evident.

If the intention is secondary, then this becomes an issue that is subject to examination and *ijtihād*. The jurists have differed about this rule. It is stated in ‘*Uṭaybiyya* about a person who prays for Allāh, but then it occurs in his heart that he would love it if he could become known (as good to people). For this he would prefer meeting others on the way to the mosque and dislike meeting them on other streets. Rabī‘a considered this disapproved of, while Mālik considered it the whispering in the heart that affects humans – that is, the Devil visits the person when he secretly wishes to be seen of men and as pious

and the Devil says to him that you are the one visible and there is none other. This is something that occurs in his heart and he has no control over it. Allāh, the Exalted, says, “But I endued thee with love from Me”,⁹⁸ and He said about Ibrāhīm (pbuh), “Grant me honourable mention on the tongue of truth among the latest (generations).”⁹⁹ It is stated in the tradition from Ibn ‘Umar (God be pleased with both), “It occurred to me that it was the date-palm and I wanted to say that. ‘Umar said, ‘Had you spoken and said it, it would have been better in my view’”¹⁰⁰ because the seeking of knowledge is an act of worship.¹⁰¹ Ibn al-‘Arabī said: “I asked our Shaykh al-Imām Abū Maṣṣūr al-Shīrāzī al-Šūfī about the words of the Exalted, ‘Except those who repent and make amends and openly declare (the Truth): to them I turn; for I am Oft-Returning, Most Merciful’,¹⁰² what did they openly declare? He said that they made their acts manifest for the training and obedience of the people. I said, ‘And is that binding?’ He replied, ‘Yes, so that trust in him is established, his leadership becomes valid, and his testimony becomes acceptable.’” Ibn al-‘Arabī said, “So that others follow him.” These matters along with others similar to them are dealt with in this manner. Al-Ghazālī considers such acts as those that do not create pure devotion in acts of worship.

The second pertains to what is specific for the person along with absence of concern for what others think. There are examples for this. The first is like praying in a mosque for getting to know the neighbours, or praying during the night for the monitoring, observation and study of various states. The second is like fasting in order to save wealth, attain freedom from cooking food or employment as a preventive measure for some pain or ailment or stomach problem. The third is the undertaking of charity for the mere pleasure of generosity and merit over others. Fourth, undertaking pilgrimage for seeing different lands, vacation after difficulty, trade, avoiding family members or avoiding the poor. Fifth, migration undertaken due to threat to self, family or property. Sixth, seeking knowledge to defend against injustice. Seventh, performing ablution to feel cool. Eighth, seclusion in mosque to evade rent. Ninth, visiting the ill or participation in funeral prayer for a return of the gesture. Tenth, teaching in order to avoid the pangs of maintaining silence or to enjoy the act of speaking. Eleventh, performing pilgrimage on foot to save wages of transportation.

This issue becomes the subject of disagreement when the intention formulated is subsidiary to the intention of worship. Al-Ghazālī imposed the requirement for this and for intentions resembling it that they be excluded from the meaning of devotion, with the condition that the act itself becomes lighter on account of such purposes. Ibn al-‘Arabī went against this view. It was as if the examination of the issue depends upon the disengagement of the two intentions or on the absence of disengagement. Thus, Ibn al-‘Arabī considers the aspect of disengagement, which makes the act of worship valid. The apparent meaning in al-Ghazālī’s consideration is the mere coming

together in existence of the two intentions, whether or not the separation of the two intentions is valid. This is based on the issue of praying in usurped premises. The disagreement on the issue is real, and Aṣḥab's¹⁰³ view in this is that it is a nullity. If this is the case, the two views become aligned, with the core reasoning of the two being apparent.

According to the view that upholds the validity of separation in cases where separation is valid, there are several variations on the basis of the evidences on the issue. In the Noble Qur'ān is the verse, "It is no crime in you if ye seek of the bounty of your Lord",¹⁰⁴ that is, during the pilgrimage season. Ibn al-ʿArabāi has said about the avoidance of discomforts during pilgrimage and migration: it is the practice of the prophets. Thus, Khalīl (Abraham, pbuh) said, "He said: 'I will go to my Lord! He will surely guide me!'"¹⁰⁵ Kalīm (Moses, pbuh) said, "So I fled from you (all) when I feared you."¹⁰⁶ In the case of the Messenger of Allāh (pbuh), the coolness of his eyes was in prayer, and he used to turn to it from the burdens of this world.¹⁰⁷ He used to find blessings and pleasure in it, so can we say that his turning to it in this way was objectionable? Never; in fact it was this that led to perfection in it and was the basis of devotion. A sound (*ṣaḥīḥ*) tradition says: "O young men! Those of you who have the ability to muster the resources should get married, for it lowers the gaze and provides protection against lust. Those who do not have such ability should adopt fasting, for in that there is control of desire."¹⁰⁸

Ibn Bashkawāl has related from Abū ʿAlī al-Ḥaddād, who said, "I saw al-Qāḍī Abū Bakr ibn Zarb visiting al-Tarjīlī, the physician, and complaining about his stomach and weak digestion of a kind that he had not experienced earlier. He asked him for medicine. He (the physician) said: 'Adopt fasting, and your digestive system will improve.' He replied, 'O Abū ʿAbd Allāh, can you not guide me to something else? I do not wish to torment my body, except for the sake of Allāh alone. I am in the habit of fasting on Mondays and Thursdays, and I do not feel that to be a burden.'" Abū ʿAlī said, "I recalled in this session a tradition from the Messenger of Allāh (pbuh) – that is, the above tradition – but I was hesitant in repeating it for him in this session, and I believe I had mentioned it to him in a previous session when he had adopted the tradition.'" The Messenger of Allāh (pbuh) sent a man to act as a watchman on a mountain path, so he started praying over there when his primary intention of being at the gorge was nothing but to be on watch and guard.¹⁰⁹

There are many traditions that convey this idea. It is sufficient to state in this context the concern of the *imām* during his prayer for the problems of the congregation, like waiting for one entering the mosque so that he can participate with him in the *rukūʿ* (bowing), according to what is reported in a tradition, which has not been acted upon by Mālik but has been adopted by others. Further, there is the direction to keep prayers short due to the old, weak and those who have needs. The tradition from the Prophet (pbuh), "I hear the cries of the child ...", and like responding to the salutation during

prayer and the call for prayer, along with other acts that lie outside the acts of prayer. In these acts the intention becomes common with prayer, yet it does not affect the devotion for prayer.

If the worship had been of a nature that the intention to perform another act affected the intention of this worship, then the other act of worship would have affected it too. Thus, if a person goes to the mosque with the intention of performing supererogatory prayers, waiting in the mosque for prayer, abstaining from tormenting people, seeking the forgiveness through angels, then each intention intermingles with the other, taking him out of proper devotion for another. This is incorrect by agreement. Each intention by itself is valid, even though the act as a whole is one, because all these are commendable in the eyes of the law. The same applies to what is not worship, but is a permitted act (during worship) and the participation is in this permission.

Consequently, the benefits that are specific to human beings do not prevent their combination with acts of worship, unless what is by its very nature contrary to the worship, like talking, eating and drinking, adornment and what is similar. As for those that are not contrary, how will the intention to perform them affect worship? This cannot be said. There is no dispute, however, that individual intentions to perform acts of worship have priority over the intention to perform worldly acts. Accordingly, if the intention for a worldly act comes to dominate the intention of worship, the rule is assigned to what is predominant, and it is not counted as worship. If the intention for worship is predominant, the rule is assigned to it. Preference in issues depends on the facts faced by the *mujtahid*.

The third pertains to eye service. The basis is that the person forms an intention of acquiring wealth or reputation; this is pure eye service and is condemnable by law. It is also damaging like the acts of the hypocrites who have entered into the fold of Islam due to other motives, probably seeking the protection of their life and property. Their acts are similar to those hypocritical people who seek worldly goods. The rule for this is known and there is no need to prolong the discussion.

Sub-Issue: Acts Related to Practices

As for the second, the act should be one that should rectify the practices prevalent among the subjects. These are like marriage, sale, hire and other similar transactions in which the intention of the Lawgiver is to secure the worldly interests of the subjects. This too is a benefit that the Lawgiver has established and considered in commands and prohibitions. It becomes known through the intention underlying the rules laid down to regulate them. When this is understood in the unqualified sense, his seeking such benefits from this perspective is not contrary to the intention of the Lawgiver, and is sound and valid. This is one interpretation.

The second interpretation is that if the seeking of benefit through these acts is subject to reproach with respect to petitioning and seeking, the acts would be deemed equivalent to acts of worship like fasting, prayer and others in terms of stipulation of intention (*niyya*) and purpose for the sake of obedience. The jurists agreed, however, that practices are not in need of intention. This is sufficient for saying that intending acts for the seeking of benefits to which they give rise is not subject to reproach. In fact, even if we presume that a person marries to be seen as married or to be seen as being chaste or something else, his marriage would be valid, in so far as intention of worship is not prescribed for such marriage so that his being seen or heard as being married may be subject to reproach. This is different from acts of worship in which the sole purpose is the glory of God the Exalted.

The third interpretation is that if the seeking of benefit through such acts had not been sound, the mentioning of gratitude in the Qurʾān and the *Sunna* would not be valid. This can be seen in the following verses: “And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect”;¹¹⁰ “He it is that hath made you the night that ye may rest therein, and the day to make things visible (to you). Verily in this are Signs for those who listen (to His Message)”;¹¹¹ “Who has made the earth your couch, and the heavens your canopy; and sent down rain from the heavens; and brought forth therewith Fruits for your sustenance; then set not up rivals unto Allāh when ye know (the truth)”;¹¹² “It is out of His Mercy that He has made for you Night and Day – that ye may rest therein, and that ye may seek of His Grace; and in order that ye may be grateful”;¹¹³ and “And made the night as a covering. And made the day as a means of subsistence.”¹¹⁴ There are numerous other texts.

In things that pertain to mere duties, the texts do not mention the aspect of gratitude, because that in itself is a burden and in opposition to usual practices meant for controlling desires. These are like prayers, fasting, pilgrimage, *jihād* and so on, as in the case of the words of the Exalted, “But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allāh knoweth, and ye know not”;¹¹⁵ after the words, “Fighting is prescribed for you, and ye dislike it.”¹¹⁶ This is different from things towards which the self is inclined or in which wants are met, and that open the doors of human acquisitions and pleasures through which the needs like food, medicines, repelling of injuries and other things are attained. In such things the mentioning of gratitude is suitable. If this is the case, this ground requires that things be acquired in the way they have been granted, because taking in this way is not a matter of reproach in worship, nor does it affect the attribute of being the Sustainer. The subjects, however, are required to express gratitude as a result of this, and this meaning is valid.

Suppose it is said: This makes it necessary that acquiring benefits devoid of the intention of acquiring benefits is also reproachable, because the understood intention of the Lawgiver is to establish the benefits with the corresponding gratitude, this too cannot be stated in the absolute sense, because of what has preceded.

The response is that acquiring them in obedience to the commands or permission brings along the benefits as a consequence. If for example, marriage is deemed recommended, then contracting it on the basis of the recommendation – with the attitude that had it not been recommended it would be given up – results in contracting it for a benefit. The reason is that the Lawgiver has intended procreation through marriage, and has then attached good consequences to it by way of pleasure and the enjoyment of blessings to the extent of perfection for the subject. The Lawgiver has intended the utilization of a lawful thing as a whole; therefore, the intention of this subject is free of the seeking of benefit, but the benefit has come as a result of the intention. There is no difference between him and the person who has intended utilization itself through marriage; there is no opposition to the Lawgiver with respect to intention; rather the two intentions are compatible.¹¹⁷ The compatibility is from the perspective of acceptance of whatever the Lawgiver has intended, which is utilization. The compatibility is also from the perspective that the command of the Lawgiver as a whole requires that the subject show goodwill, and goodwill in this case is responding to the command in addition to what He has intended as a benefit for the subject. In addition to this, in the intention of obedience to the command of the Lawgiver there is an intention of attaining the primary purpose of procreation. By obedience he is, therefore, responding to the Lawgiver with this intention, as distinguished from seeking benefit alone, which does not have this merit.

Suppose it is said: The seeker of benefits in this manner is blameworthy, because he has neglected the intention of the Lawgiver in the command from this perspective.

The response is that he has not neglected it at all. As he has handed over the reins, on the whole, in the acquisition of benefits to the Lawgiver, he attains impliedly what is required by the Lawgiver. The intention of the subject in the acquisition of benefits is not contrary to the primary intention of the Lawgiver. Further, a person coming under the rule of these benefits is also subject to the usual condition that he will procreate and will be obligated to undertake upbringing and care of the interests of the family and child, just as he is aware that if he brings about the act he will have to spend on his wife and secure her interests. The two intentions, however, are not equal – that is, the intention of obedience initially with the attainment of the accompanying benefits and the intention initially of attaining the benefits, with obedience coming consequentially. This establishes that the intention to attain benefits through an act in this category is not objectionable.

Suppose it is said: Say that we assume that the seeker of benefits did not intend obedience at all, rather merely intended his benefit. Thus, if the benefits were available to him through means that were not lawful he would have acquired them, but they were only available to him through lawful means. Is the primary intention available to him potentially or otherwise?

The response is: This too is present potentially. As he cannot access the benefits through unlawful means, having recourse to lawful means amounts to the formulation of intention through lawful means. The intention to adopt lawful means implies obedience to the command, or acting in accordance with the permission granted. This is the original primary intention even if he is not aware of it in detail. The elaboration of this point has preceded in the discussion about conformity with the intention of the Lawgiver. As for acting for benefits and desires where the intention of the actor is to attain his objective irrespective of conformity with the purpose of the Lawgiver, it is not correct. This is evident and there are numerous manifest evidences in support.

Suppose it is said: As for his forming an intention in opposition (to the intention of the Lawgiver), it is obvious that he is acting according to his whims and not in a sound manner, but when he acts without an intention of opposition he is not acting on his whims in the absolute sense. It has been elaborated on its occasion that for one acting in ignorance, when he opposes the command of the Lawgiver, the rule assigned is that of a person acting out of forgetfulness. His act is not, therefore, to be attributed to whim in this manner in the absolute sense. If he acts in conformity with the command of the Lawgiver out of ignorance, then as will be coming up in what follows his act is sound on the whole, and his act too is not based on whim. Consequently, if the act of the person acting on whim conforms to the command of the Lawgiver, why is it said that he is acting on his whim? As has been said in what preceded, when his intention conforms to the intention of the Lawgiver his acquired benefits become praiseworthy.

The response is that when he is acting without the intention of opposition, it is not necessary that his act conform to such intention; rather there are three situations:

- A situation in which he intends conformity. In this his act may conform completely, like the act of one acting with knowledge; there is no ambiguity here. It may conform accidentally, or it may not conform. In these last two situations, the actor is acting out of ignorance. If the ignorant actor thinks that in his estimation that act is performed this way, and that it is permitted in the manner in which he has undertaken it, he has not acted in opposition. He has been negligent in not taking precaution for this act. He will then be taken to task if he is negligent or he will not be questioned if there is no negligence. His act will be validated if it conformed.

- If he has intended opposition to the command of the Lawgiver, then in the case of acts of worship it is the same whether he has acted in conformity or in opposition, the opposition in intention is not validated, because he has opposed the intention in the absolute sense. In practices, the rule is to validate what conforms and to exclude what does not, because acts in which intention (*niyya*) is not stipulated for validity, conformity or non-conformity with the intention of the Lawgiver is not considered. It is like the person concluding a contract that he intends to be void, but it is concluded in a valid manner, or he drinks a laxative thinking that it is wine. He is, however, attributed with sin for formulating a contrary intention.
- If he neither intends conformity or opposition, then his act is for the mere seeking of benefit or an act arising from carelessness. It is like the act of a person who does not know what he is doing, or he knows but does it out of expediency irrespective of its being lawful or unlawful. In the case of acts of worship, the rule is absence of validity due to the absence of intention, because one acting in forgetfulness, one not aware, or one who is insane is not subject to the obligation. In the case of practices, the rule is of validity where there is conformity, and vitiation where there is none.

There is, however, a point that needs to be examined here, because it may be said: When the purpose (intention) here is negated, the conformity is not to be considered in so far as it has been let go through opposition. The effect of this is noticeable in cases of interdiction like the act of a minor or a prodigal person who has no intention that conforms to the intention of the Lawgiver with respect to the preservation of wealth. It is for this reason that their acts, according to one view, are deemed unenforceable even if an interest is secured through them, and according to another view are deemed enforceable if an interest is secured and unenforceable if no interest is secured. This issue is subject to examination. Thus (according to the first view), the absolute intention for securing an interest here does not give rise to legal effects; therefore, he is in opposition to the intention of the Lawgiver, and it is said (second view) that the intention is to be considered where legal effects can arise, and here they have arisen even without conformity with the intention of the Lawgiver, because of which the act is valid.

Sub-Issue: Intention Contrary to the Intention of the Lawgiver Is a Nullity

To the extent that we have upheld validity in transactions of practice even where there is opposition to the intention of the Lawgiver, it was based on the statements of the jurists. When we take into consideration what has been mentioned in this book, in the *Kitāb al-Aḥkām*, with respect to the types of nullity and validity, then whatever is in opposition to the intention of the

Lawgiver is a nullity in the absolute sense. It is, however, to be read with the explanation that has preceded.

The Seventh Issue: Acts That Can Be Delegated

The requirements of the *shariʿa* are of two types. The first consists of the usual transactions that are prevalent among human beings with respect to earning and all striving pertaining to this world, which provide the means to immediate benefits, like contracts in their different variations and multifarious financial transactions. The second consists of acts of worship that are obligatory for the subject for turning to the One who is worshipped.

As for the first: delegation in these acts is valid. Thus, a person undertakes them for another where he represents the other person in things that are not personal to him. It is permitted that he represent him in the securing of interests or in the repelling of harms, through support, the contract of agency and other similar arrangements. The reason is that the objective to which the actor is subject in all these is sound and another can bring it about, as in sale and purchase, accepting and giving, hiring and letting on hire, provision of services, possession and delivery, along with other similar acts. What cannot lawfully be extended to others by the subject is so for an underlying reason, in law and in practice, like eating and drinking, dressing up and residence, as well as others that in practice are not delegated like marriage and its subsidiary acts of utilization in which delegation is not valid according to law. Thus, the details will be obvious to one who examines these acts, because the underlying wisdom does permit the person to delegate them to others. Similar to these are various types of punishments and deterrents. The object of deterrence cannot be extended to another by the offender, as long as it does not pertain to a financial penalty in which delegation is valid. If the act vacillates between a financial matter and another type, it is subject to examination and *ijtihād*, like *ḥajj*¹¹⁸ and expiation. As the predominant part of *ḥajj* is ritual obedience, it does not admit of delegation, while some part of it is financial burden, and that does permit delegation. Expiation, on the other hand, is a deterrent and is therefore personal, or it is financial compulsion and thus not personal. Likewise, animal sacrifice based on what has been said about *ḥajj*. There are other acts that resemble them.

In conclusion the criterion for practices is that where they are personal to the subject there is no delegation, otherwise delegation is valid. This category does not require the adducing of evidence as the matter is quite clear.

As for the second: no one can represent another in ritual acts of worship prescribed by the *shariʿa*, and a substitute cannot replace another. The act of the subject cannot bring spiritual rewards for another,¹¹⁹ nor can they be transferred to another with an intention directed towards him. The rewards are not established if gifted and the burdens cannot be borne. This is in

accordance with the definitive, transmitted and rational perspective of the *shariʿa*. The evidence for this claim is as follows:

First: the texts indicating this meaning. These are the words of the Exalted: “Nor can a bearer of burdens bear another’s burdens”¹²⁰ and “That man can have nothing but what he strives for.”¹²¹ In one place in the Qurʾān, the words are “Nor can a bearer of burdens bear another’s burdens”,¹²² and these are followed by “If one heavily laden should call another to (bear) his load. Not the least portion of it can be carried (by the other). Even though he be nearly related.”¹²³ The Exalted thereafter says, “And whoever purifies himself does so for the benefit of his own soul.”¹²⁴ The Exalted says: “And the Unbelievers say to those who believe: ‘Follow our path, and we will bear (the consequences) of your faults.’ Never in the least will they bear their faults: in fact they are liars!”¹²⁵ “We are responsible for our doings and ye for yours”,¹²⁶ “Send not away those who call on their Lord morning and evening, seeking His face. In naught art thou accountable for them, and in naught are they accountable for thee.”¹²⁷

Further, in matters that pertain to the Hereafter no one possesses any authority with respect to another, as in the words of the Exalted, “(It will be) the Day when no soul shall have power (to do) aught for another: For the Command, that Day, will be (wholly) with Allāh.”¹²⁸ This is general with respect to the transfer of recompense and the bearing of burdens and other similar concepts. He said, “O mankind! Do your duty to your Lord, and fear (the coming of) a Day when no father can avail aught for his son, nor a son avail aught for his father. Verily, the promise of Allāh is true: let not then this present life deceive you, nor let the Chief Deceiver deceive you about Allāh”,¹²⁹ and “Then guard yourselves against a day when one person shall not avail another nor shall intercession be accepted for him, nor shall compensation be taken from him, nor shall anyone be helped (from outside).”¹³⁰ There are other such verses. In a tradition, when the Messenger of Allāh (pbuh) was warning his next of kin he said, “O son of so and so, I do not possess any power of intercession for you before Allāh.”¹³¹

Second: the meaning that emerges is that the objective of worship is devotion to Allāh, turning to Him, humility in front of Him, submission to His command, filling the heart with His remembrance, so that the worshipper is in the presence of Allāh with his heart and limbs, contemplating His glory without being unaware of His presence, striving to please Him by undertaking acts that bring him, to the extent of his ability, near to Allāh. Delegation negates this objective and is contrary to it, because this means that if another represents him, the servant is no longer a servant, and that devotion does not mean (personal) submission and turning to Him. When another person deputizes for him, it is that person who is undertaking the act of devotion and turning to Allāh. Devotion, contemplation and other such matters are the attributes of servitude and such attribution cannot be transferred to another.

Representation means that the person represented may have the same status as the representative so that the attributes of the representative may be assigned to the person represented. This is not valid in acts of worship in the way it is valid for transactions. Thus, the representative in the repayment of a debt, for example, when he represents the debtor, it is as if the debtor himself his repaying his loan, and the creditors will not demand it of him after this. This cannot be conceived in the case of acts of worship, as long as the attributes of a person cannot be assigned to the person he is representing. There is no representation at all where this is the case.

Third: had delegation been valid in physical acts of worship, it would have been valid in acts of the heart (*qalb*) as well, like faith and other acts like patience, gratitude, satisfaction, trust, fear, hope and similar acts. The obligations would then not be imposed personally on the subject due to the permissibility of representation and they would be a matter of option of personal performance and delegation right from the start. This would also be the case for matters that are purely personal, like personal acts, eating and drinking, intercourse and clothing and all those acts that are similar. It would also be applicable to *hudūd* penalties, retaliation (*qiṣāṣ*), discretionary punishment (*taʿzīr*) and other deterrents. All this is null and void by agreement on the grounds that the rules for these acts are personal. The same applies to all other acts of worship.

The verses of the Qurʾān that have preceded are all general and they do not accept restriction, because they are governing texts that were revealed as proof against the unbelievers so as to reject their belief about one person bearing the burdens of another or their claim by way of hostility. If they were deemed to accept restriction in this context, they would not amount to a response to them nor would they amount to a proof against them. This is true on the basis of the view that when generality is restricted, the remaining meaning does not amount to proof, being evident, or on the basis of the view that restriction is not possible on the basis of analogy or other methods. When the investigator examines the general Meccan verses, he finds that most of them are free of restriction and abrogation as well as other conflicting matters. It is, therefore, necessary for the intelligent person to accept them as the foundation for the universals of the *shariʿa*, and he should not depart from this rule.

Suppose it is said: How is this so? There are several rules on delegation in acts of worship, and the acquisition of compensation and burdens from another for acts that have not been performed:

First: the evidences that indicate the opposite of what has preceded. These, as a whole, are: “The dead are tormented by the wailing of the living for them”,¹³² “One who establishes a good or an evil practice has its reward or bears its burden”,¹³³ “When a man dies, his work is cut off except in the case of three things”,¹³⁴ “Part of the blame for a person who is killed in an

unjustified manner is assigned to the first son of Adam.”¹³⁵ A verse in the Qurʾān says, “And those who believe and whose seeds follow them in Faith – to them shall We join their families: nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds.”¹³⁶ This has been interpreted to mean that the children will be raised to the status of their parents even if they do not reach that status through their works. A tradition says, “The obligation of the *ḥajj* has become due for my father who is very old and cannot even sit on a mount. Should I then perform *ḥajj* on his behalf?” The Prophet (pbuh) said, “Yes.” In one narration it is said, “What if there is a debt claim against your father and you pay it, will it amount to satisfaction on his behalf?” She said, “Yes.” He (pbuh) said, “The debt claim of Allāh has a higher priority for satisfaction.”¹³⁷ Another tradition says, “If a person dies and there are unperformed fasts against him, his *walī* (heir) is to fast on his behalf.”¹³⁸ “It was said, ‘O Messenger of Allāh, my mother died when she had a vow to fulfil, but she did not.’ He said, ‘Fulfil it on her behalf.’”¹³⁹ Most of the leading jurists and scholars have upheld the requirement of this tradition. A group, however, did not do so and upheld the gifting of the act, maintaining that this will benefit the donee in Allāh’s reckoning. All this is in the category not mentioned, and this elaborates that the general principle mentioned does not have a general application; therefore, it is not sound (as a principle).

Second: we have a principle that is relied upon and is undisputed, and that is the principle of *ṣadaqa* on behalf of another, where *ṣadaqa* is an act of worship. The basis is that *ṣadaqa* is valid if it is given purely for Allāh and in obedience to His command; therefore, if a person gives it for another, such other person stands rewarded and has its benefit, especially when the other person is dead. This then is an act of worship that is permitted on behalf of another. This is emphasized by the case of the obligatory *ṣadaqa* like *zakāt*. Paying it on behalf of another is valid and implemented on account of another. *Zakāt* is of the same nature as prayer.

Third: we also have a principle that is agreed upon or like one that is agreed upon, which is the bearing of the *diya* (blood-money) by the *‘āqila* in the case of *qatl khāta*⁴ (manslaughter or accidental homicide). The meaning derived from this is that Zayd causes the homicide, but ‘Amr bears the burden. This is not possible through representation in a matter of ritual obedience whose meaning cannot be rationalized. Among these is also the delegation to the *imām* of the recitation by the follower in prayer, as well as in certain elements (*arkān*) of prayer like the standing posture, along with prostrations of error in the meaning of the *imām* performing the function on his behalf. The same applies to supplication on behalf of another, which really means devotion to Allāh and turning to Him, while the other person is cut off from the requirement of this worship. Allāh has created the angels and their worship is seeking forgiveness for the believers in particular and for the inhabitants

of earth in general. The Prophet (pbuh) sought forgiveness for his parents until the following verse was revealed: “It is not fitting, for the Prophet and those who believe, that they should pray for forgiveness for Pagans, even though they be of kin, after it is clear to them that they are companions of the fire.”¹⁴⁰ He (pbuh) said about Ibn Ubayy, “I will continue seeking forgiveness for you until I am forbidden from doing so.”¹⁴¹ The following verse was, therefore, revealed: “Whether thou ask for their forgiveness, or not (their sin is unforgivable): if thou ask seventy times for their forgiveness, Allāh will not forgive them: because they have rejected Allāh and His Messenger. and Allāh guideth not those who are perversely rebellious”,¹⁴² as well as, “Nor do thou ever pray for any of them that dies, nor stand at his grave; for they rejected Allāh and His Messenger, and died in a state of perverse rebellion.”¹⁴³ Even though he was forbidden from seeking forgiveness from them, he was not forbidden from seeking forgiveness for those of them who were still alive. Thus, the Prophet (pbuh) said, “O Lord, forgive my people for they do not know.”¹⁴⁴ On the whole, prayer for another is something that is known in the religion by necessity.

Fourth: representation in physical acts, other than acts of worship, is valid.¹⁴⁵ The same applies to some physical and financial acts of worship as well, even though they are universal obligations that are specific for each human being. The first of these is *jihād*, in which one person can represent another through the contract of reward (*juʿl*) and even without reward, when the *imām* permits this. Here *jihād* is an act of worship. If representation is permitted in this type of worship, then it should be permitted in other lawful acts, because they are all lawful.

Fifth: the consequence of imposed obligations is that they are followed by recompense. A person is sometimes recompensed for an act that he has not even performed, whether the recompense is good or bad. This is a principle that is agreed upon as a whole. This is of two types:

First type: When the hardships that descend upon a person affecting his own self, wife, children and reputation, are due to the act of one person, his bad acts are removed from him and another is taken to task for them, with the other who did not commit the act bearing his burden instead of his affliction being removed. This is illustrated by the tradition of Abū Hurayrah (God be pleased with him) about the insolvent person on the Day of Judgement.¹⁴⁶ If such recompense is without the some act, it is more like expiation alone, or expiation and wages. As has been stated in the tradition, “If a person plants a sapling or ploughs a field so that a human being or animal finds nourishment from it, he will have a reward.” Another tradition says, “Horses may be a source of reward for one man, a shelter for another, and a burden for the third. The man for whom the horse will be a source of reward is one who employs it in Allāh’s Cause, tying it with a long rope in a pasture or a garden. He receives blessings for what the horse consumes, up to the length of rope, in the pasture

or the garden. If the horse breaks loose (of its rope) and crosses a hill or two, then all its steps and dung will count as blessings for the man. If it passes by a river and drinks from it, even when the man did not intend that it drink, it will all be counted as blessings for the man.”¹⁴⁷ To this are added all the remaining texts that convey the same meaning.

Second type: This includes intentions that go beyond acts, as has been stated, “A person is assigned the credit of praying during the night or participation in *jihād* when he is prevented due to an excuse from undertaking the act.”¹⁴⁸ Likewise all other acts. Thus, the Messenger of Allāh (pbuh) said about a person who wishes to have wealth so he can spend it in the way another person has spent it, “They are equal in recompense” and in another version, “They are equal with respect to burdens.”¹⁴⁹ Then there are the traditions, “When a person resolves to do a good thing and then is unable to do it, a reward is written for him”¹⁵⁰ and “When two Muslims clash with drawn swords ...”¹⁵¹

There are other evidences that indicate that the subject will be held accountable due to his intention alone, just like the person who actually performs the act. If he is equated with the actor, when he is not the actor and there is no act on his part, then it is evident that he will be deemed the actor when he has deputized another person to undertake the act on his behalf.

The response (to all the above) is that although these things include what some jurists have upheld in the context of the validity of delegation, yet they are subject to an in-depth examination.

As for the rule of *ṣadaqa* on behalf of another, even though we have counted it as an act of worship it does not belong to this category. Our statement was about delegation in worship and that it was for seeking nearness to Allāh, and turning towards Him. *Ṣadaqa* for another, however, falls in the category of a financial transaction. There is no disagreement about this.

As for the rule of supplication, it is obvious that there is no delegation in supplication, because it is a recommendation for another and therefore does not fall in this category.

As for delegation in physical acts and in financial transaction, they are interests that can be rationalized, and to this extent the formation of an intention (*niyya*) is not stipulated for them, but if the person delegating forms an intention of seeking nearness to Allāh in so far as the matter originates with him, then he is rewarded for this. The act of worship proceeded from him and not from his deputy. Delegation for mere separation of the tasks is something external to the seeking of nearness through the payment of wealth. *Jihād*, even if it is counted among the acts of worship, is in reality something that is rationalized like all other communal obligations that serve the interests of this world. Reward in the Hereafter does not accrue for the person delegating unless he has sought nearness of Allāh through his intention along with the spreading of the word of God. If he forms an intention for this world

then the benefits are his, and with this too the interest of *jihād* are secured, just like the rule for commanding the good and the forbidding of evil; *jihād* is part of this rule. There have been scholars who have disapproved delegation of *jihād* through a promise of reward (*juʿl*), that is, exposure of the self to destruction in return for the goods of this life. If the intention of nearness is assumed here, the act of delegation is not valid at all in it from this perspective. This too is a rule against which there is no objection.

In the case of the hardships descending upon a person, they do not belong to the category of delegation in acts of worship. The recompense and expiation are in lieu of what he has gained from them and not due to an external factor. The fact that the good deeds of the unjust are assigned to the victim or the evil deeds of the victim are transferred to the unjust is something that belongs to the category of penalties. They are commutative exchanges, because the exchanges pertaining to the Hereafter are in recompense and burdens, as there is no *dinār* there, nor a *dirham*, and the time for the decisions of this world is lost.

The issues of plantation and sowing belong to the category of hardships that are financial, and they belong to the category of favours when they are done voluntarily by the owner.

The issue of one who is unable to perform acts refers to the recompense for acts that are specific to the actor without the factor of delegation, because they are reckoned for recompense due to his intention, as they are for the actor himself, as a favour from Allāh, especially when the rules of this world are decided on the basis of what is apparent. It is for this reason that it is said about a person who has become unable to perform an obligatory act of worship as well as its *niyya* that if he had been able to do it he would have done it; therefore, there is a reward for him in proportion to the act. This is so despite the fact that delayed performance is not waived for him due to what is between him and Allāh, in case the act of worship is one that accepts delayed performance. This is similar to the case of a person who hopes to kill a Muslim, commit theft or work some other evil, but he is not able to do so; he will be assigned the recompense of one who has committed such an act, but he will not be held accountable in this world like the offender in reality for purposes of assigning liability. This has nothing at all to do with delegation. If delegation is assumed, it is the deputy who will be committing the act, and the act will be his and he will be liable. These rules, therefore, do not negate what has been established in principle.

We now turn to what was mentioned at the beginning of the question, because that is the fundamental for one who opposed the issue.

The tradition of torment for the deceased due to the wailing of the living is obviously to be attributed to the custom of inducing the relatives of the ill when death is expected. As for one who lays down a practice that is followed as well as the traditions of the first son of Adam the cutting off of the act except

for three things and other similar traditions, the recompense depends upon an act that carries with it a recompense or burden, because it is this person who caused it the first time. It is to causation that consequences are attached, with the burden being referred to the person from whose act the cause arises, for it is not caused by the second actor. It is to this meaning that the interpretation of the words of the Exalted, “And those who believe and whose seeds follow them in Faith – to them shall We join their families: nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds”¹⁵² are referred. The reason is that the work of the child is the work of the father, and it is as if whatever good is done by him is attributed to the father. The words of the Exalted, “No profit to him from all his wealth, and all his gains” are interpreted in this meaning, because his child is part of his gains; no wonder the child reaches his status and becomes a source of pleasure for him just like all his other good deeds. This then is the meaning of the words, “[N]or shall We deprive them (of the fruit) of aught of their works.”

The ambiguity arises in all the remaining traditions, because they are explicit in opposition to the principle relied upon for reasoning. It is for this reason that a conflict arose in the case of what has been explicitly stated, which is in the case of *ḥajj* and fasting. As for the vow, it pertained to fasting; therefore, it is to be referred to fasting.

For the response, the reliance is upon several arguments:

First: the chains of narrations of these traditions waver. This fact is pointed out by al-Bukhārī and Muslim. Have recourse for this to the *Ikmāl*. This weakens reliance upon it for reasoning even when it does not oppose a definitive principle, so what will be the position when it does conflict with it? Further, al-Ṭaḥāwī has said about the tradition “If a person dies and there are unperformed fasts against him, his *walī* (heir) is to fast on his behalf”¹⁵³ that it has not been narrated except through ʿĀʾisha (God be pleased with her), and she relinquished it and did not act on it, giving *fatwās* that went against it. As for the tradition about the woman who died after making a vow, he said that it was narrated only by Ibn ʿAbbās (God be pleased with him). He did not follow it and rendered *fatwās* in opposition to it.

Second: the jurists have different views about these traditions. Among them are those who upheld these traditions without qualification, like Aḥmad ibn Ḥanbal. Among them are those who adopted them in part, permitting them for *ḥajj* but not for fasting, which is the view of al-Shāfiʿī. Among them are those who did not adopt them at all, like Mālik ibn Anas. Thus, you can see that some of them did not accept some of the traditions even if they were proved to be sound. This is an evidence for their weakness for purposes of adoption during examination. The indication for this is the fact that they agreed with respect to prayer about what was narrated by Ibn al-ʿArabi. If this was binding for *ḥajj* it would have been binding for the two *rakʿas* of *ṭawāf*

(circumambulation), because it is subsidiary to it. For the subsidiary acts things are permitted when they cannot be permitted for others, like the sale of a tree with its fruit after pollination and the sale of a slave with his belongings. They agreed about the disapproval of acts of the *qalb* (heart).

Third: among the scholars were those who interpreted the traditions in a manner that led to the giving up of their consideration in the absolute sense. Thus, they said: The practice of the Prophets, God's peace and blessings be upon them, was not to prevent anyone from undertaking a good deed. By this they meant that they were asked about delayed performance of *ḥajj* and fasting so they responded to what they were asked from the perspective of their being good deeds, not that they were valid when performed by the representative. These scholars said that no one is to perform any act for another, and if one does it he does it for himself, as is laid down in the words of the Exalted, "That man can have nothing but what he strives for."¹⁵⁴

Fourth: it is probable that these traditions were specific to the persons who were the originators of the cause of such acts, as in the case where a person was commanded to perform *ḥajj* on behalf of the father, or was given a directive to do so or that the person needed to put in an effort so that his effort conformed to the words of the Exalted, "That man can have nothing but what he strives for."¹⁵⁵ This is the view of some jurists.

Fifth: the statement of the Prophet (pbuh) "[H]is *wali* (heir) is to fast on his behalf" is interpreted to mean those acts in which delegation is valid, which is *ṣadaqa*, using the figurative meaning, because delayed performance is sometimes through an act similar to the one delayed, and is sometimes through a person who can act as a substitute when the person cannot himself perform the act. This is possible in case of feeding in lieu of fasting, in the bearing of expenses for the person who will perform *ḥajj*, as well as in other similar things.

Sixth: these traditions, few as they are, conflict with an established definitive principle of the *shari'a*, while the traditions themselves have not reached the status of *tamātur* in words or in meaning. In such a case, a probable evidence cannot oppose a definite evidence, as has been determined in the case of the *khobar wāḥid* that it is not to be acted upon where it opposes a definitive principle. This is a principle adopted by Mālik and Abū Ḥanifah. The interpretation is the subject matter of this point and is the objective of the discussion. Anything beyond this response is meant to weaken the adoption of these traditions. The excellent source of this principle has already been elaborated. All success lies with Allāh.

Sub-Issue: Gifting Away Spiritual Rewards

The examination of an issue remains, and this is the issue of gifting of reward (*thawāb*). The person who opposes such gifting may do so on two grounds:

First: *hiba* (giving a gift) has been declared valid in the *shariʿa* as regards specified (ascertained) things – that is, property. As for the gifting of acts, it has not been permitted. Accordingly, if there is no supporting evidence, it is not proper to maintain this view (of gifting of acts).

Second: rewards and punishments from the perspective of the Lawgiver ordaining them are like consequences with respect to causes, and the Qurʾān has pronounced this, as in the words of the Exalted, “Those are limits set by Allāh. Those who obey Allāh and His Messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (for ever) and that will be the supreme achievement.”¹⁵⁶ He then said, “But those who disobey Allāh and His Messenger and transgress His limits will be admitted to a fire, to abide therein: And they shall have a humiliating punishment.”¹⁵⁷ There are then His words, “A reward for the deeds of their past (life)”¹⁵⁸ and “Enter ye the Garden, because of (the good) which ye did (in the world).”¹⁵⁹ There are many other verses. These too are like secondary acts with respect to the primary acts, like the utilization of the bought commodity after the contract of sale, and the permission of physical access after the contract of marriage. There is, however, no choice for the subject in reward, along with the fact that it is purely a favour from Allāh, the Exalted, for the actor. If this is the case, it is not proper to undertake transactions in it, because transactions are secondary to ownership in which one has a choice, and recompense does not have this attribute. Accordingly, it is not proper for the actor to undertake transactions in what he does not own, just as it is not permitted for another to do so.

The person permitting this (the gifting of rewards) will also argue on the basis of two grounds:

First: the evidences in the *shariʿa* for the permissibility of *hiba* are those that permit gifts in property and the associated secondary benefits, which are included either due to the general and unqualified nature of the texts or through analogy (*qiyās*). Property and spiritual reward are both forms of determined recompense; therefore, permission in one is the same as permission in the other. In the case of *ṣadaqa*, it has preceded that it is the gifting of *thawāb*, and no other meaning is valid for it. When this so, the existence of an evidence is validly established and the cause for not permitting the gift does not remain.

Second: the recompense for acts is like consequences for causes, like consequential things for those that are primary. This requires the validity of ownership for the actor, just as such validity is required for worldly matters. If ownership is established, the transaction of a gift is valid.

It is not to be said that spiritual reward (*thawāb*) cannot be owned like wealth, because it is either present in the Hereafter alone, which is the blessing received there, and none of it is available at present, or a part of it is owned here, as is required by the words of the Exalted, “Whoever works righteousness, man or woman, and has faith, verily, to him will We give a new Life, a life that is good and pure and We will bestow on such their

reward according to the best of their actions.”¹⁶⁰ This is in the meaning of recompense in the Hereafter – that is, the person will benefit of a good life in this world without any obstacle being effective in the good life, just as he will acquire permanent blessings in the Hereafter. He, therefore, does not have anything to own at the moment so as to validate his donation; such validity is found in wealth that can be accumulated and owned in the present world.

We will respond by saying: Even if he does not own the recompense itself, it is the preponderant view that it has been written down for him by Allāh the Exalted, and his ownership is affirmed by the transfer of ownership, even if it is not available to him at present. Physical possession is not necessary in ownership. If this is true for wealth, where a transaction in it is valid through gift or another method, it is valid for what we are discussing. Thus, a person may say, “I have made a gift to so and so of what I inherited from so and so.” He may also say, “If my agent buys a slave for me he is a freeman or a gift for my brother.” Other similar statements are possible, even if no part of the subject matter has been taken into possession. This type of transaction is also valid for what is in the possession of the agent, even if the principal is not aware of it, and possession is a distant matter. Likewise, such a transaction is possible in what is with Allāh, who is the *makīl* (agent) for everything. Accordingly, the core point in this examination of *thawāb* is now evident. Allāh is the grantor of sound judgement.

The Eighth Issue: Persistence in Acts

Among the purposes of the Lawgiver is that the subject persistently perform the prescribed acts.¹⁶¹ The evidence for this is obvious, as in the case of the words of the Exalted, “Not so those devoted to prayer; those who remain steadfast to their prayer”¹⁶² and “Those who establish regular prayers”, where the meaning of establishing prayers is their persistent performance. Wherever the word “establishing” has been used in the context of prayer it has been interpreted in this meaning. All this has been said in the context of praise and it is an evidence of the intention of the Lawgiver. The command for this has been stated in explicit terms on different occasions. For example, in the words of the Exalted, “And establish regular Prayer and give *zakāt*.”¹⁶³ A tradition says, “The preferred acts for Allāh are those that the worshipper performs persistently even if these are minor.”¹⁶⁴ Another tradition says, “Perform that much of the act that is within your ability, because Allāh is not tired of granting benefit, it is you who become tired.”¹⁶⁵ Further, when the Messenger of Allāh (pbuh) used to perform an act, he persisted in it and his act was constant.¹⁶⁶ In addition to this, in the determining of fixed times for obligations, *sunan* and supererogatory acts, with specified cause, is a function that sufficiently indicates the intention of the Lawgiver about the persistence of acts. It is said, in the words of the Exalted, about those who could not persistently perform their acts, “But the Monasticism

which they invented for themselves, We did not prescribe for them: (We commanded) only the seeking for the good pleasure of Allāh; but that they did not foster as they should have done.”¹⁶⁷ Not fostering the act was the giving up of the acts after commencement and the lack of persistence.

Sub-Issue: Imposing Hardship

It is from this that the rule for what the Sufis made obligatory for themselves is acquired with respect to the specified times for recitation and remembrance. They commanded the observance of these acts, but they undertook acts that others did not. When the subject resolves to undertake an act that is not obligatory, it is his duty not to focus on the initial facilities alone unless he has had the opportunity to examine the consequences as well – that is, whether or not he will be able to keep up the act throughout his life. Hardship is encountered by the subject in two ways: first, on account of the intensity of the act itself from the perspective of its being light or heavy; and second from the perspective of persistent performance even if the act itself is light.

The act of prayer serves as a sufficient illustration. From the perspective of its nature, it is a light act, but when the meaning of perseverance is added to it, it becomes heavy. The testimony for this is provided by the words of the Exalted, “Nay, seek (Allāh’s) help with patient perseverance and prayer: It is indeed hard, except to those who are humble.”¹⁶⁸ Thus, it has been deemed hard so that the command of being patient is associated with it. The humble have been exempted from this meaning because they do not consider it to be hard, for they have been attributed with fear (of Allāh) that drives them and hope that becomes the determining factor. This idea is included in the words of the Exalted, “Who bear in mind the certainty that they are to meet their Lord, and that they are to return to Him.”¹⁶⁹ Fear and hope make the hardship easy. For a person fleeing from a lion the weariness of running is nothing, and for one walking towards a desired thing a long distance appears short. It is with the intention of persistent performance that the obligations have been imposed for a middle course, while hardship has been annulled and extreme courses prohibited. The Messenger of Allāh (pbuh), “This religion is strong, so enter it with gentleness. Do not make the worship of Allāh hateful for yourself, because the one who is cut off from the rest does not complete his journey nor does he have mercy on the ride.”¹⁷⁰ He (pbuh) also said, “If someone goes to the extreme in this religion, it will overwhelm him.”¹⁷¹

The Ninth Issue: The *Shari‘a* Consists of General Rules

The *shari‘a*, with respect to subjects, is a general principle (command), in the sense that it is not specific for some to the exclusion of others in its communication of the rules (*ahkām*) based on demand, nor does it selectively

burden its subject through the rules. The evidences for this, although they are evident, are several:

First: the strengthening texts like the words of the Exalted, “We have not sent thee but as a (Messenger) to all mankind”¹⁷² and “Say: O men! I am sent unto you all, as the Messenger of Allāh”¹⁷³ as well as the saying of the Messenger of Allāh (pbuh), “I was sent to the red as well as black.”¹⁷⁴ There are other texts like these, which indicate that the mission was general and not specific. Had the directives concerned specific persons to the exclusion of others, the Prophet (pbuh) could not have been sent for all mankind. It would have come to be proved that he was not sent to the person to whom the rule was not applicable; therefore, for this specific rule, he could not have been sent to all mankind. This is a nullity. And, what leads to a similar conclusion is in the same category. This is different from the case of the insane and the minor, and those like them, for they are not subject to the law. He was not sent to them in the absolute sense nor are they included in “mankind” who have been mentioned in the Qurʾān. Thus, there is no objection to this. The rules that relate to their acts and which are attributed to the declaratory rules are obvious in that sense.¹⁷⁵

Second: in so far as the rules have been laid down for the interests of the subjects, the subjects with respect to what is required by these interests are like mirrors.¹⁷⁶ Had the rules been particular, they would not have applied to the interests of the subjects in the absolute sense. They are, however, general in accordance with what has been explained earlier at its occasion. It is, therefore, established that the rules of the *shariʿa* are general and not particular. From these are exempted those rules that were specific to the Messenger of Allāh (pbuh), as in the words of the Exalted, “And any believing woman who gives herself to the Prophet if the Prophet wishes to wed her – this only for thee, and not for the believers (at large)”¹⁷⁷ and His words, “And thou mayest receive any thou pleasest.”¹⁷⁸ There are other instances in which making specific is based on an evidence. Related to these are cases where things were made specific for some of the Companions (God be pleased with them), like the testimony of Khuzayma, because that actually refers to the Prophet (pbuh), or in cases where it does not refer to the Prophet (pbuh) like making the sacrifice of a she-kid (goat) specific for Abū Barda bin Nayār by saying, “It will not be adequate for anyone after you.”¹⁷⁹ There is no discussion about this, because all this pertains to the Messenger of Allāh (pbuh), for which reason a text has been laid down for each specific occasion to indicate that the rules of the *shariʿa* are excluded from the category of particular laws.

Third: the consensus of the earlier jurists, from among the Companions, their Followers and those who followed them, on this issue. They deemed the acts of the Messenger of Allāh (pbuh) as proof for all in matters that were similar, while they made an effort in those rules that pertained to particular cases, and were not expressed in general forms, to take the course of generality

either through analogy or by interpreting them as literal general forms. This includes other attempts to show that a particular rule in the first case did not remain confined to it. Allāh, the Exalted, said, “Then when Zayd had dissolved (his marriage) with her, We joined her in marriage to thee: in order that (in future) there may be no difficulty to the believers in (the matter of) marriage with the wives of their adopted sons, when the latter have dissolved (their marriage) with them.”¹⁸⁰ The Qurʾān declared that a rule meant for a particular case became general for all mankind. Determining the validity of this consensus does not require further evidence, due to its clarity for one who pursues the study of the legal rules of the *shariʿ*.

Fourth: had it been permitted to address some persons through specific rules so that the matter became confined to certain people, the same would have been permitted for the fundamentals of Islam so that a category of persons who met the conditions of obligation would not be addressed. Likewise, in matters of faith, which is the source of all obligations. This (reasoning) is a nullity on the basis of consensus. What arises from it by implication belongs to the same category.

I do not intend by these matters authorities and what is similar to them as in the case of the judicial function, leadership, testimony and the issuance of rulings in cases. So also estimation, investigation, writing and instruction in various disciplines, because all these things refer to the verification of the qualifications required for them. The overall qualification for obligation in these is the ability of the subject to undertake them. A person who possesses the ability to undertake these functions is placed under an obligation to perform them in the absolute and general sense. If a person is not able to undertake them, the obligation is dropped for him in the absolute sense, as in the case of children and the insane with respect to ritual purification, prayer and so on. The obligation is general, and not particular, in the context of the presence or absence of ability to undertake the act, and not for another reason. This is based on the prevention of obligation which requires performance that is not possible. The same is the case with all those matters that are imagined to apply to the specific address, like grades¹⁸¹ for undertaking acts, grades of precaution in matters of religion, and so on.

Sub-Issue: Benefits of this Principle

This principle carries with it tremendous benefits.

Among these is the great strength it lends to the proof of the use of *qiyās* (syllogism) as against those who deny it. These are persons who say that the address was specific to some people or that the incident belonged mostly to the period of the Messenger of Allāh (pbuh) and there is no evidence of generality that can generalize it to other cases similar to the incident. This is not valid when there is the knowledge that the *shariʿa* has been laid down in general and

absolute terms, except when a specific incident is not intended in this way and there is no meaning within the case that can be relied upon for linking what is mentioned to what is not mentioned. We have been sent guidance in this (by the Lawgiver) to the effect that it is necessary for each occurring incident that whatever carries the same meaning be linked to it, and this is the meaning of *qiyās*. It is supported by the practice of the Companions (God be pleased with them) whose breast was opened for the acceptance of this concept. This, probably, will be elaborated in *Kitāb al-Adilla*¹⁸² later, God willing.

Among these is the fact that those who have not understood the *maqāṣid al-sharīʿa* (purposes of the *sharīʿa*) in depth imagine that the Sufis adopted a method other than the method of the majority, and that they brought out rules other than the rules contained in the *sharīʿa*. For these rules they provide proof from things like the statements and acts of the Sufis. They extract this from what has been narrated from some: A Sufi was asked about the *zakāt* due on a certain asset. He replied, “According to our view or according to your view?” He then said, “According to our opinion, the whole asset is for Allāh, but according to your rules it is such and such.” It is for this reason that people have differed about them. Those who affirm this apparent meaning, insist that the Sufis have been singled out for a specific *sharīʿa* which is superior to the one that is prevalent among the majority. Those who deny this, using abusive terms, hold them guilty and charge them with deviation from the preferred path and opposition of the *Sunna*. Both groups are on the extreme. Each subject is within the rules of the *sharīʿa* that has been preferred for the creation, as will be obvious soon. The heart of the matter lies in the proper understanding (*fiqh*) of the *sharīʿa* so that the sound meaning emerges. Allāh is the only Supporter.

In this context, many people conjecture that certain things are permitted to the Sufis when they are not permitted to others, because they have moved beyond the level of the common people, who are engrossed in their lusts, to the level of the angels who have been deprived of such desires and inclinations. Accordingly, for those who have moved on their path certain things prohibited in the *sharīʿa* have become permitted based on their being an exclusive group as compared to the majority. They mention in these the enjoyment of music although we have stated that it is prohibited. Likewise certain philosophers who deem themselves part of Islam have permitted the drinking of wine based on the intention of using it for medicinal purposes and for boosting the acts of obedience, and not as a means for intoxication. This is the door that was opened by Zindīqs through their statement: Obligations are specific to the common folk, but are waived for the elect. The basis for all this is the neglect of the preceding principle, so be concerned about it. Allāh is the Grantor of success.

The Tenth Issue: Rules and Obligations General for all Subjects

The rules and obligations are general for all subjects, in accordance with what they were for the Messenger of Allāh (pbuh), except for those matters that were specific to him. The same applies to merits and virtues. There is no merit that has been bestowed on the Messenger of Allāh (pbuh), except for those exempted, that has not been given to his Umma as a model. It is general like the generality of obligations. In fact, Ibn al-ʿArabī thought that it is the practice of Allāh that when He gives something to a prophet, He grants the same to his nation as well, and He makes them participate in it with him. Thereafter he mentioned some examples. What he said becomes evident for this religion on the basis of induction:

First: general inheritance, through succession, of the derived *ahkām* (rules). It is valid if the Umma relies to an extent on the available rules without resorting to derivation from the texts (*istinbāt*), and for this the general and absolute forms are sufficient as has been pointed out by experts in *uṣūl al-fiqh*. Allāh has, however, gifted to His servants the special attribute that He granted to His Prophet (pbuh), when He says, “We have sent down to thee the Book in truth, that thou mightest judge between people *by that which Allāh has shown thee*; so be not an advocate of those who betray their trust.”¹⁸³ About the Umma, He said, “The proper investigators would have known it from them.”¹⁸⁴ This is evident; therefore, we will not lengthen the discussion.

Second: the second is about the above meaning¹⁸⁵ that has occurred in numerous places. We will confine ourselves to thirty such meanings:

First meaning: Blessings sent by Allāh, the Exalted. Allāh has said about the Prophet (pbuh), “Allāh and His angels send blessings on the Prophet: O ye that believe! Send ye blessings on him, and salute him with all respect.”¹⁸⁶ About the Umma, He said, “He it is Who sends blessings on you, as do His angels, that He may bring you out from the depths of Darkness into Light: and He is full of mercy to the believers”¹⁸⁷ and “They are those on whom (descend) blessings from their Lord, and Mercy, and they are the ones that receive guidance.”¹⁸⁸

Second meaning: Granting of favours for satisfaction. Allāh has said about the Prophet (pbuh), “And soon will thy Guardian-Lord give thee (that wherewith) thou shalt be well pleased.”¹⁸⁹ About the Umma, He said, “Verily He will admit them to a place with which they shall be well pleased”¹⁹⁰ and “Their reward is with Allāh. Gardens of Eternity, beneath which rivers flow; they will dwell therein for ever; Allāh is well pleased with them, and they with Him.”¹⁹¹

Third meaning: Forgiveness of what has preceded and what is to come. Allāh said, “That Allāh may forgive thee thy faults of the past and those to follow.”¹⁹² In the case of the Umma, it is related that when the above verse was revealed, the Companions said: *hanṭan marṭan* (we hope you enjoy it), but what about us? The following verse was then revealed, “That He may

admit the men and women who believe, to Gardens beneath which rivers flow, to dwell therein for aye, and remove their sins from them.”¹⁹³ This was general for what had preceded and what was to come. In the previous verse, there was the meaning of completion of blessings, in the words of the Exalted, “Fulfil His favour to thee; and guide thee on the straight way.”¹⁹⁴ In the case of the Umma He said, “Allāh doth not wish to place you in a difficulty, but to make you clean, and to complete his favour to you, that ye may be grateful.”¹⁹⁵ This is the *fourth meaning*.

Fifth meaning: Revelation, which is prophethood. Allāh, the Exalted, said, “We have sent thee inspiration,”¹⁹⁶ along with all the texts that convey the same meaning. In fact, it does not need evidence. In the case of the Umma it was said, “A true dream¹⁹⁷ is the forty-sixth part of prophethood.”¹⁹⁸

Sixth meaning: The revelation of the Qurʾān in response to the desired purpose. Allāh, the Exalted, has said, “We see the turning of thy face (for guidance) to the heavens: now shall We turn thee to a Qibla that shall please thee. Turn then thy face in the direction of the Sacred Mosque: Wherever ye are, turn your faces in that direction.”¹⁹⁹ The Prophet (pbuh) wished to turn to the Kaʿba as the *qibla*. Allāh, the Exalted, said, “Thou mayest defer (the turn of) any of them that thou pleasest, and thou mayest receive any thou pleasest.”²⁰⁰ This was said when women had been made dear to him and when there was no determined number for him.²⁰¹ In the case of the Umma, ʿUmar is reported to have said, “My wish corresponded with the command of my Lord in three things: I said, ‘O Messenger of Allāh, perhaps you could adopt the station of Abraham as the place of prayer’, and then the verse was revealed: ‘And take ye the Station of Abraham as a place of prayer.’²⁰² I said, ‘O Messenger of Allāh, you are visited by the decent as well as the wicked, perhaps you could ask the mothers of the believers to adopt the *ḥijāb*.’ It was then that the verse of *ḥijāb* was revealed.” He said, “The report reached me through the Prophet (pbuh) that some of his wives had not liked this, so I went to them and said, ‘If you do not comply, Allāh will replace you with better women.’ It was then that the verse, ‘It may be, if he divorced you (all), that Allāh will give him in exchange consorts better than you – who submit (their wills), who believe, who are devout, who turn to Allāh in repentance, who worship (in humility), who fast – previously married or virgins,’²⁰³ was revealed.”²⁰⁴

There is also the tradition²⁰⁵ of the person who had pronounced *ẓihār* (injurious assimilation) against his wife so she came and said to the Prophet (pbuh), “My husband has pronounced *ẓihār* against me even though we have had a long companionship and I have borne him children.” The Prophet (pbuh) said, “You have become prohibited for him.” She turned her face towards the sky and said, “I then complain to Allāh and my plaint is sent to him.” She returned a second time and he gave the same response, and then she returned a third time when Allāh sent the following revelation: “Allāh has indeed heard (and accepted) the statement of the woman who pleads

with thee concerning her husband and carries her complaint (in prayer) to Allāh; and Allāh (always) hears the arguments between both of you; for Allāh hears and sees (all things). If any men among you divorce their wives by *ḡihār* (calling them mothers), they cannot be their mothers: none can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allāh is All-Pardoning, All-Forgiving.”²⁰⁶ There are many such occasions to be found by one who follows up the issue.

The innocence of ʿĀʾisha (God be pleased with her) from the incident at Ifk was revealed in accordance with what she had desired. She said, “I knew that I was innocent and that Allāh would surely make my innocence known, but by Allāh I had no idea that Allāh would send down revelation in this matter of mine and which would be recited. The matter to my mind was not that important that Allāh would speak on it and that it would continue to be recited. I had wished that Allāh would show the Messenger of Allāh (pbuh) a dream in which Allāh would absolve me.”²⁰⁷

In the case of Hilāl ibn Umayya he said, “By Him who has sent you in truth, I am truthful. Allāh will surely send down revelation that will save my back from the *ḥadd* penalty.” The verse “And for those who launch a charge against their wives, and have (in support) no evidence but their own ...” was revealed.²⁰⁸

The meaning elaborated here pertained to the period of the Messenger of Allāh (pbuh) alone, because revelation ended after this.

Seventh meaning: Intercession. Allāh, the Exalted, has said, “Soon will thy Lord raise thee to a station of praise and glory.”²⁰⁹ The intercession of this Umma has been established, as in the case of the words of the Prophet (pbuh) about Uways, “He will intercede on behalf of the (tribes like) Rabiʿa and Muḍar”²¹⁰ and “Your leaders intercede for you.”²¹¹ There are other texts like these.

Eighth meaning: Expansion of the breast. Allāh, the Exalted, said, “Have We not expanded thee thy breast?”²¹² In the case of the Umma it was said, “Is one whose heart Allāh has opened to Islam, so that he has received light from Allāh (no better than one hard-hearted)? Woe to those whose hearts are hardened against the remembrance of Allāh! They are manifestly wandering (in error)!”²¹³

Ninth meaning: Exclusive love. The reason is that Muḥammad is loved by Allāh. This has been established in a tradition. The Prophet (pbuh) went out one day and saw a group of Companions engrossed in a discussion. One of them said, “It is amazing that Allāh takes one from His creation as His friend.” Another said, “What is more amazing than the conversation with Moses, Allāh talked to him.” A third said, “Jesus is the word of Allāh and His spirit.” A fourth said, “Adam was chosen by Allāh.” He (pbuh) went up to them and said, “I have heard your discussion and seen your amazement.

Allāh took Abraham as His Friend, and rightly so. He whispered to Moses, and rightly so. Jesus was the spirit of Allāh, and rightly so. Adam was chosen by Allāh, and rightly so. Note that I am the beloved of Allāh, and I say this without boasting. I will bear the standard of glorification on the Day of Judgement, and I say this without boasting. I will be the first mediator and intercessor, and I say this without boasting. I will be the first one to move the ring (on the door) of heaven and Allāh will open it for me and make me enter when with me will be poor believers, and I say this without boasting. I am the most honoured from among the first and the last, and I say this without boasting.”²¹⁴ In the case of the Umma: “O ye who believe! If any from among you turn back from his faith, soon will Allāh produce a people whom He will love as they will love Him.”²¹⁵

It is stated in a tradition that he (pbuh) will be the first to enter paradise and so also his Umma (see next meaning).

Tenth meaning: The Prophet (pbuh) will be the first to enter paradise, and he is the most honoured among the first and the last. In the case of the Umma it has been said, “Ye are the best of peoples, evolved for mankind.”²¹⁶ This (best of peoples) is the *eleventh meaning*.

Twelfth meaning: The Prophet (pbuh) has been appointed as a witness over his Umma. This is his exclusive qualification as compared to the rest of the Prophets. In the Qur’ān, it is said, “Thus, have We made of you an Umma justly balanced, that ye might be witnesses over the nations, and the Messenger a witness over yourselves.”²¹⁷

Thirteenth meaning: Miracles. This includes *muʿjizāt* and *karāmāt* (miracles) for the Prophet (pbuh). In the case of the Umma there are *karāmāt*, but there is a disagreement whether a *walī* (saint) should resort to supernatural powers to prove that he is a *walī*. This meaning supports this idea, and the discussion will be coming up with the Power of Allāh.

Fourteenth meaning: The attribute of one glorifying God in earlier Books, along with other noble traits. It is said in the Qur’ān: “And remember, Jesus, the son of Mary, said: ‘O Children of Israel! I am the messenger of Allāh (sent) to you, confirming the Tawrāt (Law) (which came) before me, and giving glad tidings of a Messenger to come after me, whose name shall be Ahmad.’”²¹⁸ The Umma has been called “Those who glorify.”

Fifteenth meaning: Knowledge despite being unlettered. Allāh, the Exalted, said, “It is He Who has sent among the unlettered a messenger from among themselves, to rehearse to them His signs, to purify them, and to instruct them in Book and Wisdom – although they had been, before, in manifest error.”²¹⁹ He also said, “So believe in Allāh and His Messenger, the Unlettered Prophet, who believeth in Allāh.”²²⁰ A tradition says, “We are an unlettered Umma, we do not undertake calculations nor do we write.”²²¹

Sixteenth meaning: Secret conversations with angels. It is obvious in the case of the Prophet (pbuh). It is reported about some Companions that angels

used to converse with them, as in the case of ʿImrān ibn al-Ḥuṣayn. It is also reported about the saints.

Seventeenth meaning: Forgiveness prior to the raising of the issue. Allāh, the Exalted, says, “Allāh give thee grace! Why didst thou grant them exemption until those who told the truth were seen by thee in a clear light, and thou hadst proved the liars?”²²² In the case of the Umma is the verse, “Then did He divert you from your foes in order to test you but He forgave you: For Allāh is full of grace to those who believe.”²²³

Eighteenth meaning: Raising of esteem. The Exalted says, “And raised high the esteem (in which) thou (art held)?”²²⁴ This is interpreted to mean that Allāh has linked the Prophet’s name with His own name in the statement of *imān* (faith), in the call to prayer, and this has raised the esteem of the Prophet (pbuh) and his name to be proclaimed. About the esteem of the Umma and its praise much has been said in the Qurʾān and in earlier books. It is reported in some traditions about Moses (pbuh) that he said, “O Lord, treat me as one of the Umma of Aḥmad.” He said this when he saw the indication about him and his praise.²²⁵

Nineteenth meaning: Enmity towards him is enmity for Allāh, and obedience to him is obedience to Allāh. Allāh, the Exalted, has said, “Those who annoy Allāh and His Messenger – Allāh has cursed them in this world and in the Hereafter, and has prepared for them a humiliating punishment.”²²⁶ A tradition says, “Whoever torments me, tries to torment Allāh.”²²⁷ Another tradition says, “Whoever gives torment to a friend of mine has declared open war against me.”²²⁸ Allāh, the Exalted, has said, “He who obeys the Messenger, obeys Allāh”,²²⁹ that is, one who does not obey him does not obey Allāh.

Twentieth meaning: Being chosen. Allāh, the Exalted, has said about the Prophets (peace be upon them), “We chose them, and we guided them to a straight way.”²³⁰ About the Umma He said, “He has chosen you, and has imposed no difficulties on you in religion.”²³¹ A tradition says that the Prophet (pbuh) is the chosen one among creation.²³² About the Umma, the Qurʾān says, “Then We have given the Book for inheritance to such of Our servants as We have chosen.”²³³

Twenty-first meaning: Peace from Allāh. Traditions require the wishing (recitation) of peace from Allāh for the Prophet (pbuh). Allāh, the Exalted, has said, “Say: Praise be to Allāh, and peace on His servants whom He has chosen (for His message)”²³⁴ and “When those come to thee who believe in Our signs, say: ‘Peace be on you.’”²³⁵ Jibril is reported to have said to the Prophet (pbuh) about Khadija, “Proclaim peace for her from her Lord and from me.”²³⁶

Twenty-second meaning: Remaining steadfast in the face of human turmoils. The Exalted has said, “And had We not given thee strength, thou wouldst nearly have inclined to them a little.”²³⁷ In the case of the Umma it was said, “Allāh will establish in strength those who believe, with the word that stands firm, in this world and in the Hereafter.”²³⁸

Twenty-third meaning: Unending reward. The Exalted has said, “Nay, verily for thee is a reward unfailing.”²³⁹ In the case of the Umma, He said, “Except such as believe and do righteous deeds: for they shall have a reward unfailing.”²⁴⁰

Twenty-fourth meaning: Making the Qurʾān easy for him. The Exalted says, “It is for Us to collect it and to recite it. But when We have recited it, follow thou its recital (as promulgated). Nay more, it is for Us to explain it (and make it clear).”²⁴¹ Ibn ʿAbbās interpreted this to mean, “It is for us to collect it in your heart, then it is for us to explain it” – that is, to make it plain through your tongue. In the case of the Umma, He said, “And We have indeed made the Qurʾān easy to understand and remember: then is there any that will receive admonition?”²⁴²

Twenty-fifth meaning: Sending blessings of peace mandatory in prayer. The reason is that it is stated in *al-tashahhud*: “Peace on you O Prophet, the mercy of Allāh and His blessings. Peace on us and on His servants who are good (on the straight path).”

Twenty-sixth meaning: Allāh has called His Prophet (pbuh) by His own names, like Raʿūf and Raḥīm. For the Umma are names like: *muʾmin*, *khabir*, *ʿalim* and *al-ḥakim*.

Twenty-seventh meaning: Allāh has commanded that Allāh and His Messenger (pbuh) be obeyed. The Exalted has said, “O ye who believe! Obey Allāh, and obey the Messenger, and those charged with authority among you.”²⁴³ “Those charged with authority” here are the rulers and the jurists. A tradition says, “Anyone who obeys my (appointed) leader has obeyed me”²⁴⁴ and he (pbuh) said, “Whoever obeys the Messenger has obeyed Allāh.”²⁴⁵

Twenty-eighth meaning: The communication (from Allāh) is based on compassion and is timely. It can be seen in the words of the Exalted, “Tā-Ḥā. We have not sent down the Qurʾān to thee to be (an occasion) for thy distress.”²⁴⁶ And: “A Book revealed unto thee – so let thy heart be oppressed no more by any difficulty on that account”,²⁴⁷ and “Now await in patience the command of thy Lord: for verily thou art in Our eyes.”²⁴⁸ In the case of the Umma, it was said, “Allāh doth not wish to place you in a difficulty, but to make you clean, and to complete his favour to you”,²⁴⁹ “Allāh intends every facility for you; He does not want to put to difficulties”,²⁵⁰ “Allāh doth wish to lighten your (difficulties): For man was created weak (in resolution)”,²⁵¹ and “Nor kill (or destroy) yourselves: for verily Allāh hath been to you Most Merciful!”²⁵²

Twenty-ninth meaning: Protection from going astray after receiving guidance as well as other forms of general protection. Allāh protected the Prophet (pbuh) in all this. In the case of the Umma it is said, “My Umma will not come together on an error”²⁵³ and “Guard Allāh’s remembrance and He will protect.”²⁵⁴ The Qurʾān states: “(Iblis) said: ‘Then, by Thy Power, I will lead them all astray – except Thy servants among them, sincere and purified

(by Thy Grace).’”²⁵⁵ The interpretation of this in the words “My Umma will not come together on an error.” He (pbuh) said, “By Allāh I am not afraid that you will fall prey to polytheism when I am gone, but I am afraid that you will start competing with each other (for worldly gains).”²⁵⁶

Thirtieth meaning: Leading the Prophets in prayer. The tradition of al-Isrāʾ says that the Prophet (pbuh) led the Prophets in prayer. He (pbuh) said, “I saw myself in the company of the Prophets when the time came for prayer, so I led them in prayer.”²⁵⁷ In the tradition of the descent of Jesus (pbuh) towards the end of times, it is stated that “the *imām* of this Umma will be from this Umma, and Jesus will follow this *imām* in prayer.”²⁵⁸

Anyone who studies the *sharīʿa* will find many occasions indicating that the Umma of the Prophet (pbuh) acquires blessings and good things from him, and that it inherits the traits and states that were specially granted to him by Allāh or were acquired by him. Praise be to Allāh for this.

Sub-Issue: Conclusive Presumptions Derived from the Principle

A number of conclusive presumptions are derived from this principle.

Among these is the rule that all that has been given to this Umma in terms of merits, honours, illuminations, endorsements and many other favours, is derived from the niche (of the lamp) of our Prophet (pbuh), but only to the extent of following him. No one should be under the impression that he has attained blessings without the intermediation of the Prophet (pbuh). And why not, for he is a bright lamp that lights up everything else and he is the ultimate knowledge that provides guidance for treading on the right path.

Perhaps someone may say: Certain things have been manifested through the work of the Umma – matters that were not seen to arise in the case of the Prophet (pbuh) – especially traits that were exclusive to some like the fleeing of Shaytān (Satan) from the shadow of ʿUmar ibn al-Khaṭṭāb (God be pleased with him), whereas the Devil had entered into a tussle with the Prophet (pbuh) during prayer. He (pbuh) said to ʿUmar, “When you tread upon a mountain pass (path), the Devil moves to a mountain pass other than yours.”²⁵⁹ It is related about ʿUthmān (God be pleased with him): “Even the angels of the heaven feel bashful in his (angelic) presence.”²⁶⁰ Such praise was not related even with respect to the Prophet (pbuh). It is related about Usayd ibn Ḥuḍayr and ʿAbbād ibn Bishr that “once they went out from the presence of the Messenger of Allāh (pbuh) on a very dark night and a glow of light could be seen in front of them (to lead them on). When they parted ways, the glow split into two and stayed with them.”²⁶¹ There is no report like this in the case of the Prophet (pbuh). There are other transmitted reports about the Companions (God be pleased with them) and for some of their Followers, which are not reported in the case of the Prophet (pbuh).

It will be said to this person: All that has been transmitted about saints and scholars, or will be transmitted up to the Day of Judgement, regarding states, miracles, knowledge, understanding and other such things, are instances that are subsumed under the broad category that has been transmitted from the Prophet (pbuh). The instances of this genus, or the particulars of this universal, bear attributes that are suitable for the particular in so far as it is a particular. Even when the universal is not attributed with it in so far as it is a universal it does not indicate that the particular has a higher merit than the universal, or that this particular has something special that is not related to the universal; and how can this be when the particular is related to the universal only by being a particular? The reason is that it belongs to its reality and is included in the nature of the universal. The same applies to the apparent attributes of the Umma that have not been reported from the Prophet (pbuh), for it is an illustration of the attributes of the Prophet (pbuh) and his wonderworking.

The evidence for the validity of the above assertion is that nothing can be attained that is not proportional to the extent of the pursuit and following of the Prophet (pbuh). If such merits could emerge for the Umma, assuming exclusivity and independence, following the Prophet (pbuh) would not have been a condition for it. This becomes evident through the illustration mentioned for ‘Umar (God be pleased with him). You can see that the trait mentioned is the fleeing of the Devil from him, which is protection from falling prey to his viles and persuasions for the commission of sins. You know very well that the most complete, absolute and general, protection is an attribute of the Messenger of Allāh (pbuh), for he was infallible for both minor and major sins in the general and absolute sense. There is no need to specify this meaning here. The special point about ‘Umar (God be pleased with him) is part of this sea of protection.

Further, the fleeing of the Devil, or staying at a distance, from a human being has as its purpose protection and nothing more. In these attributes, too, the Prophet (pbuh) had greater merit. Among these is the fact that Allāh had granted him the ability to overpower the Devil, so much so that he was about to tie him up with the pillar in the mosque, but then he remembered the statement of Solomon, “O my Lord! Forgive me, and grant me a kingdom which will not belong to another after me: for Thou art the Grantor of bounties (without measure).”²⁶² ‘Umar (God be pleased with him) was not able to do anything of the sort. Among these is also the fact that the Prophet (pbuh) came to know about this merit in his own case and that of ‘Umar (God be pleased with him), while ‘Umar did not know anything about it. Among these is also the fact that the Messenger of Allāh (pbuh) was secure from the vales of the Devil, even when he came near him, while ‘Umar (God be pleased with him) was not secure in this meaning even when the Devil stayed at a distance.

As for the quality of ‘Uthmān (God be pleased with him), there is nothing stated that opposes the same about the Prophet (pbuh); rather, it has been

transmitted about him that he (pbuh) possessed it to a greater extent, even though he did not mention this himself, because not mentioning it does not necessarily lead to its absence. Further, this was due to a quality that was found in ʿUthmān (God be pleased with him), which was his extreme shyness. The Prophet (pbuh) himself was the most shy of all persons, even more than a virgin confined to the recesses of her private chamber. As shyness is the basis, the Prophet (pbuh) was one in whom it reached perfection.

The statement about Usayd and his companion is to be considered in the same manner, because the purpose was the lighting up of the path so as to enable walking on it without difficulty. Darkness did not affect the sight of the Prophet (pbuh), and he could see in darkness just as he could see in light. In fact, a veil thicker than the veil of darkness could not affect his sight, for he could see what was behind him just as he could what was in front of him. This is more acute as the miracle was in the sight and not in what was to be seen (light on the path). Nevertheless, this was among the miracles of the Prophet (pbuh) and one of the wonders that appeared in the Umma after him as well as during his lifetime.

This is the explanation that should be relied upon and such specific matters are to be understood in this way, but not as a whole. It may appear that the person examining the issue faces some apparent ambiguity initially, but there is no ambiguity in this through the power of Allāh. See the principle about merits and traits expounded by al-Qarāfi.

Sub-Issue: Examining Miracles

One of the benefits of this principle is that each miracle proceeding from someone should be examined. If it has a basis in the miracles and wonder-working powers of the Messenger of Allāh (pbuh) then it is valid, but if it does not have such a basis, it is not valid – even if it superficially appears to be a wonder-work. The reason is that not each miracle that proceeds from an individual is a wonder-work, but there are only some that are so, while there are others that are not.

The elaboration of this is through the illustration of those with psychic powers, astrologers and astronomers, who are also able to bring about miraculous feats, but these are all darkness piled upon darkness with no basis of validity. They do not have a basis in the wonder-powers of the Prophet (pbuh). Had this been through some kind of supplication, then the supplication of the Prophet (pbuh) did not have these attributes nor did it have this nature. He did not rely on the gyration of the planets, nor did he rely on their bringing fortune or misfortune, rather he (pbuh) relied completely on the Being to whom all affairs are referred and to whom is all recourse. He turned away from the planets and forbade reliance on them, for he said, “Among my servants are those have become believers in Me and those who disbelieve in Me.”²⁶³ If

he intends a particular time or calls for intending it, it is due to a reason that is free of all this, like the tradition of *tanzīl*²⁶⁴ or the gathering of the angels at the two ends of the day,²⁶⁵ and so on. Supplication too is an act of worship, which cannot increase or decrease things; I mean those states that are sought or those required forms that are not known beforehand from the past. The same applies to supplications that were not prevalent in earlier or later times, nor were they practised by the Prophet (pbuh) or the worthy ancestors, in which the nature of numbers is taken into account in the estimation of philosophers and those who toe their line, but which no one else has upheld. Where this (working of miracles) is without the use of supplications, like focusing attention on things until they are affected, it is not established through transmission nor can one find a basis for it. In fact, the basis for this is a scientific rule and a philosophic order, but does not pertain to the *shari'a*. Even though a miraculous effect is attained through this, it is not based on an evidence of validity – as in the case of supernatural death and wounding or the attainment of the effect through magic and hypnosis, along with other things. All this is not a testimony for its validity; rather, it is a pure nullity and mere transgression. This is the occasion where the common folk and many of the learned are likely to slip; therefore, care is to be exercised.

Sub-Issue: Acting on the Basis of Miracles

One of the presumptions is that when it is established that the Prophet (pbuh) cautioned, gave good news, warned, recommended while acting as required by miracles on the basis of true assessment, sound inspiration, manifest illumination and good dreams,²⁶⁶ then anyone who acts in the same way, focusing on some of these things, is doing the right thing and acting on something that does not lie outside the lawful, provided he observes the conditions for doing so. Evidence for this, in addition to what has preceded, are two things:

First: the Prophet (pbuh) acted on the basis of miracles giving commands, prohibitions, warnings, good news and instructions, but he did not mention that this is exclusively for him and does not extend to his Umma. This indicates that the Umma is governed by the same rule in this as he was. The status of each act that proceeded from him is that no evidence is established about its being exclusive to him, and out of these the good news that he left behind for his Umma are sufficient. The benefits of this are good news, and warnings on which are based acts and restraints.

The Prophet (pbuh) said to ‘Abd Allāh ibn ‘Umar (God be pleased with him) about his dream of two angels and their saying to him, “You are the best of men if you pray more.” After this he continued to pray more.²⁶⁷ In another narration the Messenger of Allāh (pbuh) said, “Verily ‘Abd Allāh is a good man if he prays more during the night.”²⁶⁸ The Prophet (pbuh) said to Abū Dharr, “I see you as weak and I prefer for you what I prefer for myself. Do

not assume authority over two persons and do not accept management of the orphan's wealth."²⁶⁹ He (pbuh) said to Tha'labā ibn Ḥātab when he asked him to pray that he be given excessive wealth, "A little for which thanks is rendered is better than much that you cannot handle (with respect to thanks)."²⁷⁰ About Anas he said, "O Lord! Give him increase in wealth and children."²⁷¹ This indicates that the Prophet (pbuh) had different views about what was the best act for each one of them acting on the basis of his sound assessment of each. Thus, he said, "Tomorrow I will give the standard to one at whose hands victory (over Khaybar) will be granted."²⁷² He then gave it to 'Alī (God be pleased with him) and Allāh granted victory at his hands. He said to 'Uthmān ibn 'Affān (God be pleased with him), "Perhaps Allāh will make you wear a shirt, then if they (people) wish that you take it off do not do so." This beneficial advice was based on information from the unseen. He informed them that there will be times when people will have carpets, a person will wear one dress in the morning and another in the evening, one dining-sheet will be placed before him while the other is being removed. He then said at the end of the tradition, "You are better today than you will be then."²⁷³ He then informed them about the rule of Mu'āwiyā and informed him²⁷⁴ that 'Ammār will be killed by a rebel group.²⁷⁵ He then informed them about a ruler who will delay prayers until after the appointed time.²⁷⁶ He then advised them as to how they should behave when they face problems after his time; asking them to be patient.²⁷⁷ Include in this all the reports that he (pbuh) gave them about the unseen and that strengthened faith, affirmation, caution and good news. The reports are more than can be reckoned.

Second: the acts of the Companions (God be pleased with them) were also based on assessment, illumination, inspiration and revelation of the dreams. This is like the statement of Abū Bakr (God be pleased with him), "They are (both) your brother and sister." 'Umar (God be pleased with him) said, "O Sāriya, to the mountain"; he gave the advice on the basis of what he saw through illumination. He also forbade a person who used to narrate tales to people, saying, "I am afraid you will rise until you reach the Thurayya (Pleiades)." A person related his dream to him that the sun and the moon were doing battle with each other, so he asked him, "Who did you side with?" The man replied, "The moon." He said, "You sided with the absorbing sign. You will never be consistent." Transmission of such cases from the worthy ancestors is abundant and even from the scholars and saints following them, may Allāh make us benefit from them.

The examination of the condition stipulated for undertaking the acts in the light of these facts still remains. The discussion is somewhat lengthy; therefore, we will deal with it separately, and that is (as follows).

The Eleventh Issue: Acts Demolishing the Rules of the *Shari‘a*

These matters are not to be taken into account or considered, except with the condition that they do not violate a rule of the *shari‘a* or even a principle of *din* (religion).²⁷⁸ Whatever demolishes a principle or a rule of the *shari‘a* is not itself true. In fact, it is either an idea or conjecture, or it is a prompting of Satan. It may or may not be mixed up with the truth. Considering all such things is not valid from the perspective of its opposition to what is established as lawful, because the legislation that the Messenger of Allāh (pbuh) brought with him is general and not specific, as has been discussed in the previous issue. A foundational principle of this legislation cannot be demolished, nor can its continuity be shattered nor is the subject to feel perturbed by following its rules. If this is the case, then anything of this nature – that is, matters we are concerned with here – is void and a nullity when it opposes what is known from the *shari‘a*.

An illustration of this is what was asked of Ibn Rushd.²⁷⁹ The question was about a judge before whom two persons meeting the conditions of moral probity testify on a certain matter. The judge sees in his dream the Prophet (pbuh) telling him, “Do not rule on the basis of this testimony for it is false.” This type of dream is not valid either for a command or a prohibition, nor is it valid for good news or a warning, because it demolishes one of the primary principles of the *shari‘a*. Likewise, all other things that belong to this category. The report that “Abu Bakr (God be pleased with him) implemented the bequest of a person, after his death, on the basis of what he saw in his dream”, pertains to a matter that is particular; it does not undo a general principle. Perhaps, the heirs agreed to this; therefore, it does not demolish a fundamental principle.

On the same lines, if it becomes known to a person on the basis of illumination (*kashf*) that a certain water is usurped or is impure, that a witness is a liar or that certain wealth belongs to ‘Amr and has been acquired by ‘Amr on the basis of some proof, or matters of this nature, then it is not valid to act in conformity with such information, unless an apparent cause becomes manifest. Accordingly, it is not valid to move to substitute ablution (*tayammum*), or to reject the testimony of the witness or to reject evidence of wealth belonging to Zayd, under any circumstances, because the apparent causes are leading to a different conclusion on the basis of the rule of the *shari‘a*. Thus, he is not to give them up while relying on mere illumination or conjecture, just as he is not to rely on a dream seen in sleep. Had this been permitted, it would have been permitted to set aside the rules (*aḥkām*) through such information even though the legal effects are the same.²⁸⁰ This is not valid under any circumstances. Likewise the matters we are concerned with here.

It has been reported in the sound compilations, “You bring a dispute to me and it is possible that one of you may be more adept in presenting his proof than the other, so I will rule on the basis of what I hear from him ...”²⁸¹ Thus, he confined the issuance of the ruling to the requirements of what is heard and

the giving up of what is beyond that. In most of the cases that were brought before him, he (pbuh) knew the actual basis of right and wrong, but he (pbuh) always gave a ruling on the basis of what he heard and never on the basis of his own (inner) knowledge. This is the basis for prohibiting the judge from giving a ruling on the basis of his personal knowledge.

Mālik (God bless him) upheld the opinion well known from him that when witnesses meeting the threshold of probity testify before the judge on an issue about which he has personal knowledge that runs counter to the testimony, it is obligatory for him to rule on the basis of their testimony, unless he comes to know (legally) about their intention to commit perjury. The reason is that if he does not rule according to their testimony, he becomes a judge ruling on the basis of personal knowledge. Further, the knowledge of the judge is derived from the practices about which there is no doubt and not on the basis of miracles that may interfere with things. The person who upholds the validity of the judgement of the judge on the basis of personal knowledge, requires the judge to rely on knowledge that is derived from normal practices not on the basis of miracles. It is for this reason that the Messenger of Allāh (pbuh) did not take it into account even though it is the highest form of proof. Ibn al-Arabī has related about the chief Judge al-Shāshī al-Mālikī at Baghdad that he used to decide on the basis of intuitive knowledge (*firāsa*) following the method of Iyās ibn Mu‘āwiya when he was a judge. He said that his Shaykh Fakhr al-Islām Abū Bakr al-Shāshī wrote something to refute this method. This is what he said: He deserves the refutation if he used to decide on the basis of intuitive knowledge alone without recourse to other proof.

Suppose it is said: This is ambiguous from two perspectives:

First: this goes against what has been transmitted from those who relied on illumination and wonder-working. People have forbidden the consumption of things whose consumption was apparently permitted to them, due to reliance on illumination or on reports that were unusual. Have you not noticed what was reported about al-Shiblī when he resolved that he would eat only what is *ḥalāl* (lawful). He saw an olive tree in the wilderness and was about to eat from it when the tree called out: Do not eat of me for I belong to a certain Jew. It is reported from ‘Abbās al-Muhtadī that he married a woman and on the day of seclusion he felt some remorse. As he tried to draw near to her, he felt he was being forcibly restrained. He therefore denied her and withdrew. After three days, it became known that she already had a husband. Likewise a person gets a normal or unusual premonition that a certain consumable thing is lawful or unlawful. For example, the case of Ḥārith Muḥāsabī who had a particular vein in one of his fingers that would start throbbing when he extended his hand towards something doubtful, making him withdraw his hand.

The basis for this is the tradition of Abū Ḥurayra (God be pleased with him), and from others, about the story of the poisoned goat. It is stated that the Messenger of Allāh (pbuh) began eating from it along with others, when he

called out, “Restrain your hands for I have been informed that it is poisoned.” This led to the death of Bishr ibn al-Barrāʾ.²⁸² The Messenger of Allāh (pbuh), therefore, based his command on this report. He stopped eating himself and stopped his Companions from doing so too, on receipt of the information. This also conforms with the earlier Scriptures, which is law for us unless abrogation is affirmed. It can be seen in the story of the cow of Banū Isrāʾīl when they were asked to slaughter it and to strike the person killed with a piece from the cow. Allāh raised him up and he gave information about his killer, which led to the process of retaliation.²⁸³ Then there is the story of Khidr regarding the miracle of the boat and the killing of the young man. It obviously pertains to this idea. There are other reports about the miracles of the Prophets (peace be on them) and wonder working of the saints (God be pleased with them).

Second: when it is established that miracles are like normal practices with respect to the prophets and the saints just as the normal practices are with respect to us, like the indication through a normal fact about the impurity of water or its being usurped leading to its obligatory avoidance, it is the same in their case. The reason is that there is no difference between reports from the realm of the unseen and reports from the witnessed world, just as there is no difference between seeing the falling of impurity in water with one’s eyes and seeing it through illumination from the unseen. It is, therefore, necessary to base the ruling on this just as it is necessary for that. Anyone who makes a distinction between the two has moved away.

The *response* is that there is no dispute between us that an act based on what has been mentioned is sound, and is the acting upon something that is lawful as a whole. This is seen from two perspectives:

First: taking into account the act that was from the Prophet (pbuh) and then linking through analogy what carries the same meaning, provided it is not established that this type of miracle is specific to the Prophet (pbuh) in so far as it belongs to the miraculous matters, on the evidence of the incident. It becomes specific to him in as far as it is a miracle. On this basis, the story of Khidr stands abrogated in our *shariʿa*. According to some scholars he was acting, with respect to the miracle of the boat, on what was established for him through normal facts, while a ruling cannot be based upon the killing of the young man. Likewise, the story about the cow is abrogated according to one interpretation, but it applies on another interpretation confined to the ruling of the school with respect to the victim saying: “My blood is upon so and so.”²⁸⁴

Second: on the assumption that it cannot be extended through analogy – which is contrary to the requirement of the first principle, as the prevalent rule is to act upon analogy; however, if we assume its absence – we will say: These stories from the saints rely on *sharʿi* texts that imply the avoidance of rancour of the heart, which is a sin. Rancour is due to innumerable factors, and this type is included in it. The Prophet (pbuh) has said, “Piety is that about which the heart feels satisfied, while sin is what is contrived in the

heart.”²⁸⁵ This does not go beyond what relies upon the texts of the *shari‘a*, according to those who interpret rancour in a very general sense and do not tie it to a particular act. They maintain that in the consideration of such things, there is nothing that overturns a principle of the *shari‘a*. Our discussion, however, is similar to the issue discussed by Ibn Rushd, but the killing of the young man by Khidr on this basis is not at all upheld by our *shari‘a*. It is a rule that stands abrogated. The interpretation deems it a narration that arises from the requirement of the question, but the fundamentals of the *shari‘a* indicate the contrary. The presumption that a ruling must be based upon the apparent is definitive especially in the case of the *ahkām* and it is so generally in matters of faith as well. The Chief of Mankind (pbuh) who was known by the revelation used to implement matters on the basis of what was apparent in the case of the hypocrites and others. Even though he knew about their internal states, this did not lead him to move out of the normal course that the apparent causes take.

It is not to be said: This belongs to the category of what was said (with respect to the hypocrites): “Out of fear that people will say that Muḥammad kills his Companions.”²⁸⁶ The *‘illa* (underlying cause) was something else and not what was thought. If the factor on which the *‘illa* is based is absent, then there is no harm (in basing the ruling on internal evidence).

The reason is that we will say: This is the most powerful of evidences about what has been stated (with respect to the hypocrites). The reason is that the opening of this door would have led to the non-protection of the order of apparent evidences. If it has become obligatory to kill on the basis of apparent evidences, then the excuse is evident, but if the demand for killing is made without apparent evidence, or merely on a factor from the unseen, then it will cause consternation and make the apparent evidences rusty. The understanding of the *shari‘a* points to the closing of this door as a whole. Do you not look into the category of litigation that relies on the rule, “The burden of adducing evidence is on the claimant, while the oath is to be administered to one who denies (the claim).”²⁸⁷ No one was exempted from this, so much so that the Messenger of Allāh (pbuh) was himself in need of producing evidence in what was denied out of his purchases. He said, “Who will testify for me?” It was Khuzayma ibn Thābit (God be pleased with him) testified, and Allāh rendered that as two witnesses.²⁸⁸ What then do you think about a single person from the Umma? Even if the leading person²⁸⁹ in the community makes a claim against the most honest person, the burden for the evidence will be on the claimant and the oath will be administered to one who denies. The issue belongs to this category and is of this nature. Thus, the consideration of unseen matters is to be examined in accordance with the commands and prohibitions of the *shari‘a*. It is for this reason that saints and others have not taken seriously each illumination or communication that conflicts with the *shari‘a*; rather, they have deemed the source to be Satan. If this

is established then the issue of states transmitted from the saints become ambiguous.

What is mentioned about the speech of the tree is not opposed to the *shari'a*, in so far as the consumption of figs from it is prohibited for the person in the conversation. It is like finding a prey in the wilderness, but it says to him, "I am owned" and other similar incidents. He lets it go, however, as he can survive without it placing his reliance on Allāh, or he takes into account the presence of food in another location and so on. The same applies to all matters in this category. We may also say that the subject was consumable for him by law, but he gave it up due to this sign, just as a person gives up one of two permitted things after consultation, or on seeing a dream, or other sign, as will be mentioned later by the power of Allāh. We say the same with respect to water about which he comes to know intuitively that it is impure or usurped. If he has an alternative available which apparently does not demolish a principle of the *shari'a*, rather he turns from one permissible thing to another, then there is no harm in following his intuition. If we assume opposition to the requirement of this intuition, acting upon the apparent meaning while relying upon the *shari'a* for his transaction, then there is no harm and the person will not attract blame, because the purpose of the miracles and wonder-works is not to demolish a fundamental of the *shari'a*, nor to have recourse to a thing that opposes it; and how can this be, for all this is the result of following the *shari'a*.

Reflect on what has been laid down about those who go through the process of *li'an*.²⁹⁰ The Prophet (pbuh) said, "If she bears such and such a child then it belongs to so and so, but if she bears such and such a child it belongs to so and so."²⁹¹ When the woman delivered the child the indications pointed to what was reprehensible, but *ḥadd* was not implemented. The same tradition says, "Had it not been for the oaths, she and I would have issues to settle."²⁹² This indicates that it was the oath that prevented and the prevention of what he had resolved on the basis of assessment had no legal value in the face of the legality of the oaths. If the matter had been established by evidence or by confession after the oaths and the statement of the husband, the oaths would not have been able to waive the *ḥadd* from her.²⁹³

Second: the response to the second question is that even if miracles for them (the prophets) are like other normal practices, this does not lead to acting upon them in the absolute sense, because these have not been established in conformity with the *shari'a* that is followed. Further, when miracles come about they imply an opposition to the usual; therefore, they are ambiguous and resemble what is not right – like a dream that does not conform to the usual and is like someone saying to the person, "Do not do this", when he is duty bound by the *shari'a* to do it, or he says, "Do it", when he is prohibited from doing so. This often happens in the case of a person who is not following a sound spiritual method, or one who is treading his own path without a *shaykh*

(guide). Anyone who studies the lives of the saints will find them protecting the manifest rules of the *shari'a*, and not turning in the *shari'a* to such things.

Suppose it is said: This requires that such things should not be acted upon, when the issue is based on the presumption that they are to be acted upon, it will be said to him: the negative factor here is to act upon them when a fundamental principle of the *shari'a* is being demolished. Acting upon them when they are in conformity with it is not negated.

Sub-Issue: Permissible Acts

If the consideration of this condition is established, then what form will the practice, which conforms to the *shari'a*, take?

The statement for this is that the permissible and required matters in which there is latitude are to be acted upon in accordance with the requirements of what has preceded. This takes place in several ways:

First: that the act be in a matter that is permissible (*mubāḥ*). For example, the person invoking illumination (*kashf*) sees that a person wishes to visit him at a certain time, or he comes to know what he wishes do with respect to conformity or opposition, or he comes to know what discussion or belief exists he holds whether true or false, along with other such things. He then prepares in accordance with the intention of the visitor, or takes precautions before his arrival if the intentions of that person are evil. This is permissible for him, as in the case of a dream that would require the same. He should, however, deal with him only in a manner that is lawful, as has preceded.

Second: the act he undertakes should be beneficial with whatever he hopes to succeed. Any rational person will not impose on himself that which has adverse consequences. By having recourse to this, he may come to be conceited or be affected otherwise. Wonder-working, just as it is a special trait, is also a trial and examination, so that it can be seen how a person behaves in such a state. The discussion has preceded. If it is done to meet a need or to bring about a cause that he requires, there is no harm. The Messenger of Allāh (pbuh) used to be informed about unseen things due to his need for such information. It is well known that the Prophet (pbuh) did not report each unseen that he came to know, rather it was only some occasions and according to the requirements of the need. The Prophet (pbuh) informed those offering prayers that “he could see them from behind his back”, in so far as there was benefit in this for them as has been explained in the tradition.²⁹⁴ It was possible for him to command things or forbid things without telling them about this ability. The same applies to all his wonder-works and miracles. It is better for the Umma to adopt this practice for such matters²⁹⁵ than the first approach. It is, nevertheless, within the rule of permissibility, as has preceded with respect to the fear of adverse things like conceit and the like. The reports in the case of the Prophet (pbuh) are sound, and none of these is devoid of a

benefit. This leads to the strengthening of faith of each person who saw this or heard about it, which is a benefit that does not cease as long as the world survives.

Third: there should be an element of caution and good news in it so that each person can prepare for it. This too is permissible, like a report to the effect that such and such will happen if this does not happen, or that it will not come to pass if this is done. He should then act in accordance with that, according to the standard of a true dream. He adopted the same method with it that he does with a true dream. It is like the report about Abū Ja‘far ibn Tarkān, who said, “I used to sit with the poor, so I was given a *dinār*. I resolved to give it to the poor, but then I said to myself, ‘Perhaps I am in need of it myself.’ A pain arose in my tooth, so I removed it. After that, the pain arose in the next tooth until I had that removed. I then heard someone calling, ‘If you do not give them this *dinār* not a single tooth will be left in your mouth.’” It is reported about al-Rūdhbārī that he said, “I went to extremes with respect to ritual purification. One night, my heart became constricted due to the excess water that I poured and yet did not satisfy. I said, ‘O Lord! I seek your forgiveness.’ It was then that I heard a caller say, ‘Forgiveness is in Allāh’s knowledge.’ The constriction went away.”

On the whole, there is no escape from the observance of the preceding condition in the matter of acting according to miracles; the condition is required. I mentioned these three ways so that they become illustrations, so that they become a standard for similar cases, and should be examined within this context. This discussion gives the indication of another principle, which is:

The Twelfth Issue: Rules General for Both Worlds

The *sharī‘a*, just as it is general for all subjects, and is applicable to all of their circumstances, is general with respect to the unseen world and the seen world from the perspective of each subject. We refer to it all that emerges from the *bāṭin* (hidden world) just as we refer to it all that emerges in the visible world. The evidences for this are several:

First: all that has preceded in the previous issue with respect to giving up consideration of miracles except that which conforms to the apparent *sharī‘a*.

Second: the *sharī‘a* governs and is not governed. Had the miracles and matters of the unseen deemed to govern it through the restriction of the general, the qualification of the absolute, the interpretation of the probable, and the like, then other things would be able to govern it too and it would have been turned into the one governed by others. This is a nullity by agreement and so also what necessarily flows from it.

Third: the conflict of miracles with the *sharī‘a* is in itself an evidence of their nullity. The reason is that they appear on the face of it to be

wonder-works, but are not so in reality, rather they are acts inspired by Satan. This is similar to what is related by ʿIyād from the jurist Abū Maysara al-Mālikī who said that he was praying one night in his prayer niche, imploring and beseeching in humility when he went into a state of gentle absorption. It was then that the niche appeared to burst and powerful light emerged from it turning into the face of the moon. It said to him, “See me to your fill O Abū Maysara for I am your Lord Most High.” I spat on it and said, “Go away O Cursed One, may Allāh’s curse be on you.” A story is also related about ʿAbd al-Qādir al-Kaylānī that he felt extremely thirsty when there appeared a cloud and started sending down a drizzle so that he drank of it. A voice then came from the cloud, “O so and so, I am your Lord and I have permitted all prohibited things for you.” He replied, “Go away O Cursed One.” The cloud then disappeared. It was said to him, “How did you come to know that it was the Devil?” He said, “Due to the words that he had permitted prohibited things for me.” Had the *shariʿa* not provided a ruling, it would not have been possible to say that these happenings and what resembles them are known to be from Satan.

Something like this was derived by Khadija bint Khuwaylad (God be pleased with her), the wife of the Messenger of Allāh (pbuh), in the early days of the revelation. She said to him, “O cousin, will you be able to inform me about this companion of yours who visits you, when he visits you?” He replied, “Yes.” She said, “Let me know when he comes.” He informed her when he came and she said, “Get up O cousin. Sit on my right thigh.” He did so and she asked, “Can you see him?” He replied, “Yes.” She then moved him to her left thigh, and then to her lap. Each time she would ask whether he could see him and he would say yes. The narrator says that she felt frustrated, but then threw away her veil, while the Prophet (pbuh) was sitting in her lap. She then asked, “Do you see him?” He said, “No.” In one narration, it is said that she took him into his outer garment and the Angel disappeared. She said, “O cousin, take strength and rejoice, for by Allāh it is an angel, and not the Devil.”²⁹⁶

It is not to be said that there are other perceptive faculties that are specific to the saints that are not subject to examination through the *shariʿa*. The reason is that we will say: If it is what you say it is, conceding the fact, then these perceptive faculties are part of the wonder-works and miracles taken as a whole, because it is only a saint (friend of Allāh) to whom they exclusively belong. Thus, there is no difference between them and other miracles that are witnessed. It is, therefore, necessary to have a rule that governs its validity and a basis that testifies to its veracity, otherwise there will be an interruption, which is not possible. It is also not sufficient in this to make a claim of a psychic force, because a psychic force, in so far as it is a psychic force, has no evidence for its validity or invalidity. The reason is that pains and ecstasies are emotions that are not denied, but this does not indicate their validity or invalidity under the *shariʿa*. Likewise all other things from which a human

being is not able to seek release. Anger, for example, when it overcomes an individual, is something that cannot be denied like other emotions or distinguished. It is sometimes laudable, when it is for the sake of Allāh, and at other times blameworthy, when it is for something other than Allāh. These cannot be distinguished except from the legal (*sharʿī*) perspective, because it is not proper to say that this anger is one that its owner thinks is laudable and not blameworthy without recourse to the *sharīʿa*. The reason is that praise and blame are to be referred to the *sharīʿa* and not to reason. On what basis has he concluded that it is praiseworthy according to the *sharīʿa*? In the same manner, he cannot conclude anything about it without any kind of recourse to the *sharīʿa*. It is also not valid to attribute the distinction to a trainer or instructor, because the discussion applies to him as well.

What becomes difficult in the issue is that a human being has no ability to acquire miracles, nor to repel them, because they are gifts from Allāh, the Exalted, given exclusively to any of His subjects that He wants. There is no ruling of the *sharīʿa* for them, even if it is assumed that the states conflict with it, for these are like a sudden pain or feeling of sorrow felt by a person, or a feeling of joy in the same manner without any effort. Just as these things are not described as right and wrong, and there is no legal rule attached to them, likewise in our issue. The states more closely resembling these are fainting and insanity. There is no *sharʿī* rule associated with these, even if we assume that they lead to injury to others, like destruction of property by the insane, homicide, or drinking of wine in a state of insanity. Have you not noticed that it is reported from almost all of them that they get absorbed in these states so much so that the timings of prayers pass by and they are not aware of them, they make promises and then are taken over by illuminations and states so that they are not able to meet them, and they see the private parts of creation through their illumination as well as other such things? These states and what is similar to them occur in their case and are reported from them, and they are overcome by them whether they wish these or reject them. How then can these be denied or deemed to fall under the rules of *sharīʿa*?

The response is that what has preceded with respect to the evidences is sufficient to establish the basis of the issue. The objection raised is not really an objection, because a human being has no ability to acquire or reject miracles, yet his ability is related to the causes of these consequences. It has preceded that a subject is addressed (by the law), through commands and prohibitions, with respect to the causes, while the consequences are the creation of Allāh. Miracles are part of these consequences. It has also preceded that the legal rule for the consequences arising from the causes is attributed to the subject, from the perspective of causation. The reason is that it is the practice of Allāh with regard to the consequences that they be judged according to the standard of the causes with respect to their uprightness and distortion, balance and abstention. Miracles are consequences of obligation-creating causes; therefore,

in proportion to the pursuit of the practice in acts, and in proportion to the invoking of blemishes of dirt and murky whims, miracles are described as consequential. Just as the soundness or otherwise of acts is known from the results of ordinary acts, it is known in the case of what we are occupied with. Allāh, the Exalted, has said, “(It will be said), ‘O ye Unbelievers! Make no excuses this Day! Ye are being but required for all that ye did!’”²⁹⁷ and He said, “At length it will be said to the wrong-doers: ‘Taste ye the enduring punishment! Ye get but the recompense of what ye earned!’”²⁹⁸ “Verily, it is your acts that We reckon for you, and it is a return for these that We give back to you.”²⁹⁹ This is general for matters of this world and the Hereafter. The detailed cases of *fiqh* (law) in the case of transactions bear testimony of the practices here. The topic is definitive on the whole.

If this is established then what emerges from miracles, with respect to their being straight or distorted, is attributed to some prior devotional practice; the results follow the preliminaries without doubt. The obligation-creating rule will remain attached to miracles from the perspective of the preliminary steps taken, and the owner will be accountable. In such a case, miracles will not be excluded from a legal (*sharʿī*) examination, unlike illness, insanity and the like, whose cause has not been initiated by the subject, and for which a legal rule does not create liability. If we assume that the subject has brought about the cause for acquiring this state then these too would be attributed to him, and liability will be directed towards him, as in the case of intoxication³⁰⁰ and so on. From this determination, the conclusion is derived that the law (*sharʿ*) governs miracles and other things, and none of these things escape it. Allāh knows best.

Sub-Issue: Supernatural Acts to Be Verified through the Sharīʿa

It is known from all of this that each out-of-the-ordinary thing that has occurred, or will occur until the Day of Judgement, is not to be rejected or accepted except after checking it against the rules of the *sharīʿa*. If it is found permissible by the *sharīʿa*, then it is sound and acceptable within its location; otherwise, it is not to be accepted. This does not apply to the miracles that issued forth from the Prophets (peace be upon them), because no one has the right of examination in their case, as they definitively sound and no other rule is possible. It is for this reason that Ibrāhīm (pbuh) decided to slaughter his child on the basis of his dream. His son said to him, “O my father! Do as thou art commanded: thou will find me, if Allāh so wills, one of the steadfast!”³⁰¹ Examination is only to be undertaken in the case of miracles that arise from normal practices in the case of those who are not infallible.

The elaboration of examining it is to assume that the miracle arises from the normal course of practice. If it is a permissible act, customary or new, and is permissible on its own, it is to be accepted otherwise not. It is like when a man sees through his powers a woman who is uncovered

or sees her private parts, even though he does not intend to do so, when it is not permitted to see her under normal circumstances, or he can see himself entering into someone's house and that person is cohabiting with his wife, and he can see this, or he is able to see a child in a woman's womb and also sees the woman's skin and body parts that it is normally not permissible to see in a state of consciousness, or he hears a voice with words and letters saying, "I am your Lord", or he sees a floating form which says, "I am your Lord", or he sees and hears someone saying, "I have permitted for you all prohibited things", along with other such things; these are not acceptable to the laws of the *shari'a* under any circumstances. Analogy is to be used for things resembling these. Allāh is the Grantor of success.

The Thirteenth Issue: Recurring Habits

As legal obligation is based on stability in the recurring habits of the subjects, it is necessary to examine the rules of the recurring habits, in so far as they are relied upon to bring the subject under the rule of obligation. Among these is the fact that the coming into existence of the practices in the normal course is a matter that is known and is not conjectural; I mean, in terms of general categories and not particular instances. The evidence for this is of several types:

First: the scriptural laws are seen, on the basis of induction, to lay down these categories, and we will consider our own *shari'a*. The general obligations in it, with respect to those in creation placed under them, are laid down according to a single standard, to the same extent, and in the same order. There is no difference in them with respect to earlier or later. This is manifested through the fact that the subject matter of obligations – and these are the acts of the subjects – are also the same. The acts of the subjects run in the same order as long as the world remains in the same order. If recurring habits (human nature) in the world had changed, it would have required a change in legislation, a change in the order, as well as a change in the divine communication. All this is a nullity.

Second: reports in the *shari'a* have laid down that the states of this world (existence) are permanent and will not accept change until the Day of Judgement. These reports are just like those of the heavens and earth as well as what is between them, along with the benefits, transactions and states. They state that there is no changing of the *sunnat Allāh* (the practice of God) nor is there any change in the (system of) creation of Allāh, and that the laws (*sharā'i'*) too are based upon this standard. The report from a true person cannot be different in content from him; the difference between them is not possible.

Third: had the continuity of practices not been known, the basis of religion would not have been known either, over and above knowledge about its detailed rules. The reason is that religion cannot be known without acknowledgement of prophethood, and there is no way of acknowledging it

without the mediation of miracles. Miracle has no meaning except that it is an act that is out of the ordinary with respect to the normal. An out-of-the-ordinary act is not attained with respect to the normal, except when the continuity of practice is established with respect to the present and the future, just as it has been continuous for the past. Normal practice has no meaning other than this that if the assumed act is not linked to deviation, it will occur like other known acts similar to it. If it is linked to a claim of the extraordinary with respect to the normal, it is known that it has occurred contrary to the normal and the claimant is truthful. If the normal practice is not known, knowledge about his being truthful is by necessity not attained. The reason is that the occurrence of this type of miracle is not claimed without its being linked to the claim of deviation. Knowledge, however, is attained, which indicates that what is based on this knowledge is also known. This is what is required:

Suppose it said that this conflicts with what indicates that the continuity of recurring practices is not known; and if it is known it is conjectural. The evidence for this is based on two points:

First: the continuity of an act in the world is the same as its coming into existence for the first time, because continuity is due to a continuously long period. It is possible that a continuous long period will not exist, just as the continuous non-existence in early times was possible. When it is found, one of the extremes of possibility is attained with the permissibility of original non-existence remaining. Likewise, its existence in the second period is possible, and so also its non-existence. If this is the case, then how is knowledge about its continued existence possible along with the possibility of its continued non-existence? Is this not the core of the impossibility?

Second: the existence of the extraordinary is not rare; rather, it is found in abundance, especially what occurs in the case of the Prophets (peace be upon them). Likewise, what has occurred in the case of saints of this Umma and also with respect to other nations. Occurrence is in excess of mere possibility, and it is stronger as persuasive proof. Consequently, it is not correct at all to say that the usual occurrence of practices is known.

The response to the first point is that rational possibility cannot be denied rationally, but it is rebuttable through definitive transmission. If it is disproved through transmission, which is all the evidences that have preceded, the permissibility of the rational ruling is not attained.

It is not to be said that this contradiction is between certainties, for that is impossible.

The reason is that we will say: It is impossible if the conflict is only from one perspective, but it is not so here, rather rational possibility remains here according to its rule of the basis of possibility, while the denial through transmission relates to occurrence. How many possible things are there that do not actually occur? Likewise, we maintain that the world, prior to its coming into existence, could possibly remain in the state of non-existence and it could

possibly come into existence; therefore, its relationship to continued existence or moving into existence from its own perspective is a single relationship. From the perspective of the knowledge of Allāh it must come into existence; its existence is necessary, while its continued non-existence is impossible, even though for itself remaining continuously non-existent is possible. It is for this reason that they (scholars) said, “Blessings for one who dies as an unbeliever and torment of a Muslim is possible.” This probability, however, is impossible from the perspective of information from Allāh that it is the unbelievers who will be punished while the Muslims will be blessed. Thus, permissibility, denial and necessity cannot be true of a single occurrence. Likewise here: possibility is from the perspective of the possibility itself, while necessity and denial are due to an external factor. The two, therefore, do not conflict.

With regard to the second, we have already said that the knowledge that governs practices pertains to general existing categories and not to particulars. The objection raised belongs to the domain of particulars that cannot demolish the general categories. It is for this reason that the objection does not apply at all to the sources of recurring practices either through doubt in or reliance upon the act conforming to the practice. Had there been no established knowledge about practices, the extraordinary would not have appeared, as has preceded. This is the noblest of evidences about the continuity of practices, the basis for which has been described by Fakhr al-Islām al-Rāzī (God bless him).

When we see a particular in which the usual practice is upset, it indicates to us what is indicated by miracles: with respect to the prophethood of the Prophet (pbuh) if a deviation from the usual occurs; or with respect to the domain of the saint, whether or not the claim of sainthood is found, on the view that such a claim is permissible. The upsetting of the practice does not diminish our knowledge about the continuity of general practices. It is like our seeing a practice at the level of the particular in the past and in the present, which leads to the preponderance in our minds that it will continue in the future as well. It is also permitted in our view that it be upset on the evidence of those cases in which it has been upset. This in no case diminishes our knowledge of the continuity of general practices. This is the rule in all the issues of *uṣūl al-fiqh*. Do you not see that acting upon *qiyās* (syllogism) is definitive, acting upon an individual narration is definitive, acting upon preference in the case of conflicting evidences is definitive, and so on. When you undertake a particular analogy so as to act upon it, the act is probable, or when you act according to a particular individual narration you find it probable and not definitive. Likewise all other issues. This does not negate the basis of the universal issue.³⁰² All this is obvious.

The Fourteenth Issue: Recurring Practices

The recurring continuous practices are of two types. The first are the recurring practices of the *shari'a* that have been affirmed, or negated, by a *shar'i* (legal) evidence. This means that the *shari'a* should either have commanded it as an obligation or recommendation, or prohibited it as a disapproval or prohibition, or it should have permitted it by way of commission or omission. The second type is practices prevalent among the creation for which there is no *shar'i* (legal evidence) with respect to negation or affirmation.³⁰³

As for the first, it is established forever, like all the commands of the *shari'a*, in cases like the negation of the capacity to render testimony on the part of the slave, the command about the removal of impurities, preparation through purification for devotion, covering of the private parts, prohibition of performing the circumambulation of the Ka'ba while naked, or other such recurring practices prevalent among the creation, which are either good according to the *shari'a* or bad. These are part of all the things that are included under the rules of the *shari'a*. There is no way to change these, although the opinions of the jurists differ (about their exact impact). It is not valid in these to turn good into evil and evil into good, for example, like saying, "The acceptance of the testimony of the slave is not to be rejected due to his good habits; therefore, we will permit it" or "If the private parts are exposed in the present times it is not a defect nor an abomination; therefore, we will permit it", along with other such things. The reason is that if this were valid it would amount to the abrogation of the established and continuous rules, and abrogation after the death of the Prophet (pbuh) is a nullity. Thus, the removal of the practices of the *shari'a* is a nullity.

As for the second, these practices may either be established (fixed) or changing (altering over time). Despite this, they serve as causes for the *ahkām* (rules), which will flow from them. The established are those like the existence of desire for food and drink, sexual intercourse and looking, speech, violence, walking and other things. In so far as these are causes leading to consequences, the Lawgiver (*shāri'*) will issue a ruling about them. Consequently, there is no ambiguity in taking them into account, basing rules on them and issuing permanent rulings that conform to them.

Those that change:

Among these are those that change in practice from good to bad, and vice versa. This is like keeping the head uncovered, because it leads to the occurrence of differences in accordance with the difference in country. It is something impolite in eastern lands, while it is not considered bad in western lands. The rule of the *shari'a* will differ according to these differences. In the people of the eastern lands it eliminates moral probity, while in western lands it does not.

Among them are those that differ due to the expression used for intentions, thus, one expression turns into another expression. This is either due to a

difference in nations, like Arabs and non-Arabs, or within a single nation like the difference in terminology of the specialists within a trade as compared to the terms used by the majority, or due to the excessive use of a term in one meaning so that the word acquires a meaning that comes first to mind when it was used to signify another meaning before this, or that the word was a homonym and acquired a single meaning, along with other such changes. The legal rule (*ḥukm*) too will descend to what is customary for the term with respect to those who have become accustomed to it, but not those who have not. This type of change usually runs in the fields of oaths, contracts and divorce, whether it is explicit or allegorical.

Among these are those that differ with respect to acts in transactions (*muʿāmalāt*) and other things. It is like the practice in the case of marriage to take possession of dower prior to consummation, or that a certain sale that it be spot and not delayed, or vice versa, or that the period of delay be such and such and not otherwise. Thus, the rule too will be made accordingly as is recorded in books of *fiqh*.

Among them are those that differ due to matters that are external to the subject, like puberty, which is reckoned according to the practices of the people with respect to ejaculation and menstruation or the reaching of a certain age in the case of those who ejaculate or menstruate. Likewise, in menses, either the practices of the people are taken into account in the absolute sense, or practices pertaining to the woman herself or her relatives, and so on. The rule then is to be assigned by the *sharīʿa* in accordance with the practice and change in it.

Among them are those that pertain to out-of-the-ordinary matters going against practice, as in the case of persons for whom the extraordinary is part of their regular practice. The rule in such cases will be laid down in accordance with the permanent and continuous practice that is prevalent, with the condition that the first practice does not return due to another extraordinary event. It is like a person who urinates and defecates (being) subjected to surgery for whom the passages that are usual for people become non-existent in the case of this person. If he does not become like this then the rule is based on the usual practice. The difference sometimes is manifested in other ways. Despite this, what is considered in this from the perspective of the *sharīʿa* are these practices in themselves, and the rule will be assigned to them. The reason is that the law (*sharʿ*) is laid down for matters that are customary and that apply to ordinary matters, as has been explained earlier.

Sub-Issue: Difference in Rules for Recurring Practices

Know that what has been stated here about the difference in rules on the basis of recurring practices is in reality not a difference in the divine communication (*khitāb*). The reason is that the *sharīʿa* has been laid in a manner that is

permanent and perpetual, and if it is assumed that the world will remain without an end then the *shari'a* will remain in the same way without needing anything additional. The meaning of difference is that when practices differ then each practice is referred to a principle of the *shari'a*, which governs it. The example is the case of puberty (*bulūgh*), because the divine communication is removed from the minor for the period prior to puberty, and when the minor reaches puberty obligations are imposed on him. The suspension of obligations prior to puberty and then application after it does not mean a difference in the divine communication. The difference occurs in practices or in the evidence supporting them. This applies to the rule after consummation of marriage where the accepted statement, based on the prevalent practice, is that of the husband about the payment of dower. The acceptance of the statement of the wife after consummation based on the abrogation of the practice will not amount to a difference in the rule, rather the rule is that the person to whom the rules give preference will have his (or her) statement accepted, because he is the claimant. The same is the case with all the remaining examples. Thus, the established rules (*aḥkām*) follow their unqualified causes. Allāh knows best.

The Fifteenth Issue: Recurring Practices and Necessity

The recurring practices have been taken into account in the law as a necessity, whether they have their basis in the *shari'a* or in some thing other than the *shari'a* – that is, whether or not they have been established through a legal evidence by way of command, prohibition and permission. As for those determined by a legal evidence, their affair is obvious. In the case of the other practices obligation cannot be assigned properly except through a legal evidence (of command, prohibition or permission). It is an accepted fact that deterrence is the cause of prevention of opposition (to commands). The words of the Exalted are, “In *qiṣāṣ* (the law of retaliation) there is (saving of) Life for you, O ye men of understanding; that ye may restrain yourselves.”³⁰⁴ Had the practice not been considered by the law, *qiṣāṣ* would not have been prescribed nor would it have been lawful, because the law in such a case would have been without benefit. This is rejected by His words, “In *qiṣāṣ* (the law of retaliation) there is (saving of) life for you, O ye men of understanding; that ye may restrain yourselves.”³⁰⁵ Likewise sowing is the cause for the growth of crops, marriage is the cause of progeny, and trade is the cause for the growth of wealth in practice. Allāh says, “And seek what Allāh hath ordained for you”,³⁰⁶ “Disperse through the land, and seek of the bounty of Allāh”³⁰⁷ and “It is no crime in you if ye seek of the bounty of your Lord (during pilgrimage).”³⁰⁸ There are other evidences similar to these indicating the invariable following of consequences after the causes. Had the consequences not been intended by the Lawgiver in making the causes lawful, it would have been contrary to a definitive evidence. What emerged from such reasoning (requiring no purpose) would also be a nullity.

The second interpretation pertains to what has preceded about the issue of knowledge of practices. That is what applies here.

The third interpretation is that when we are certain that the Lawgiver has taken interests (*maṣāliḥ*) into account, it necessarily follows that He takes recurring practices into account. The reason is that if legislation is according to a uniform standard, it shows the operation of the interests in this, because the basis of legislation is the cause of interests, and legislation is perpetual as has preceded; therefore, the interests are perpetual too. This is the meaning of taking practices into account in legislation.

The fourth interpretation is that if the recurring practices are not taken into account it will lead to obligating the impossible, which is not permissible or does not occur. The meaning is that the divine communication either takes into account the knowledge and capacity of the subject as well as other similar things, or it does not consider them. If it does take them into account, then that is what we intended. If it does not take them into account, then it means that the obligation is directed towards one who can understand and is able, and also towards one who cannot understand and is not able to perform the act, as well as towards one who is facing a legal obstacle and one who is not. This is the very essence of the obligation to do the impossible. The evidences for this meaning are many and evident.

Sub-Issue: Disruption in Recurring Practices

If the recurring practices are taken into account by the *shariʿa* then their demolition does not diminish such consideration as long as the practice prevails on the whole. It is the disruption that is to be examined.

The meaning of their disruption is that they are eliminated with respect to the particular. This is substituted at the location by a state that is either a state of general excuse customary among people or by another state. If it is disrupted due to an excuse then the location is that of an exemption (*rukḥṣa*). If it is due to another reason then it is a transfer, of one case, to another perpetual practice in accordance with its normal form, as in the case of a urinating person subjected to surgery for whom it is now a practice.³⁰⁹ This is to be referred to the rule of the earlier practice, and not to the rule of exemptions, as has preceded. In another case, it is a transfer to something other than a practice or to a practice that does not disrupt the first practice. If it moves to another unusual practice that does not disrupt the first practice, then that too is apparently considered, but in a manner that relates to the category of exemptions, like a customary illness or customary journey with respect to combining of two prayers, breaking a fast, curtailing prayers and so on. If it moves in an extraordinary manner to what is not customary, then will it have its own independent rule, or will the rules of things compatible with it apply?

It is necessary to illustrate it first and then examine the operation of these rules in the case of the extraordinary.

Among these is the avoidance by ʿUmar ibn ʿAbd al-ʿAzīz (God be pleased with him) of coercing the person who refused to pay *zakāt*, and his statement to one who wrote to him about it, “Let him be.” Then there is the incident of Ribʿīyy ibn Ḥirāsh when al-Ḥajjāj demanded from him the whereabouts of his son, because he wanted to kill him. When al-Ḥajjāj asked him he gave him the information when the father knew what he intended to do. There is then the incident of Abū Ḥamza al-Khurāsānī who fell into a well and then the mouth of the well was blocked but he did not make a complaint. The conversation of Abū Yazīd and his servant³¹⁰ when Shaqīq al-Balakhī and Abū Turāb al-Nakhshabī is as follows: They said to the servant,³¹¹ “Eat with us.” He said, “I am fasting.” Abū Turāb said, “Eat and you will have the reward of a month of fasting.” He refused, so Shaqīq said to him, “Eat and you will have the reward of fasting for a year.” He refused, and Abū Zayd said, “Let that person go who has fallen in the eyes of Allāh.” The young man was arrested a year later for committing theft and his hand was cut. Among these is also entering a forest or a land teeming with predators without any provisions, as both amount to voluntarily submitting to destruction.

What is said on this occasion, after knowledge that what opposes the *sharīʿa* is not valid, is that these incidents are not at all to be interpreted as opposition to the *sharīʿa* when the faith of the person concerned, his piety, and merit are proved. This is done on the basis of the good impression affirmed about their examples. The reason is that those charged with this are our worthy ancestors from among the Companions (God be pleased with them), as well as others who followed their example in piety and merit. What is to be examined is the basis due to which this is permitted under the *sharīʿa*.

Consequently, what they have taken as a basis for their actions is either extraordinary with respect to the ordinary or it does not belong to this category.

If it is the first, it is linked to the category of customary practices.

The illustration is the command to break fast. Perhaps, it was based on the view of those who consider that one fasting voluntarily is the master of his own affair, and these are quite a few. Thus, the refusal of the student³¹² to comply amounts to stubbornness and the pursuit of his whims. The same applies to one fearing the consequences in the Hereafter, especially in conformity with the repute of a person whose merit and piety have become well known. Similar to this is also the ignoring of the person who refused to pay *zakāt*. Perhaps, it was a kind of *ijtihād* (interpretation), because he treated him like one completely engrossed (in a trance) who rejects the pillars of religion, so that he feels the deterrent himself and gives up what he was about to do. And, this is how it happened, for he retracted from his position and paid the *zakāt* that was due; he had not intended to give it up completely, but

to feel deterred due to it or to test his spiritual state. Had he persisted in this, he (ʿUmar) would have dealt with him as other rejecters are dealt with.

An illustration of this is also the incident of Ribʿiyy ibn Ḥirāsh. It is related about him that he never used to lie, and it is for this reason that al-Ḥajjāj asked him about his son. Speaking the truth is one of the loftiest of general rules. The permissibility of lying is by way of exemption (*rukḥṣa*) where it is better not to act according to the requirements of this exemption; in fact, speaking the truth (despite the exemption) has great reward as in admitting disbelief (*kufṛ*) under pressure, which is the height of falsehood. Allāh, the Exalted, said, “O ye who believe! Fear Allāh and be with those who are truthful”,³¹³ after He had informed about the three who were left behind. He praised them for observing the truth for an occasion that permitted an exemption. Their act of following the truth was praised on the grounds that taking refuge in the path of fear (of Allāh) is full of hope. It is said, “You have to speak the truth where you fear that it will harm you, for that will benefit you. And, you have to give up falsehood where you think that it will benefit you, for it is bound to harm you.”

The incident of Abū Ḥamza is also an example. It belongs to the category of following the ultimate in certainty. He had resolved that he would not rely on anyone other than Allāh, and in doing so he did not follow the exemption. This is a general principle that is sound. The details of his affair are indicated by the words of the Exalted, “And if any one puts his trust in Allāh, sufficient is (Allāh) for him.”³¹⁴ Putting one’s trust in Allāh is greater than putting it in another. Hūd (pbuh) had said, “So scheme (your worst) against me, all of you, and give me no respite. I put my trust in Allāh, my Lord and your Lord! There is not a moving creature, but He hath grasp of its forelock. Verily, it is my Lord that is on a straight path.”³¹⁵ When Abū Ḥamza concluded this compact, he was asked to fulfil it due to the words of the Exalted, “Fulfil the Covenant of Allāh when ye have entered into it, and break not your oaths after ye have confirmed them; indeed ye have made Allāh your surety; for Allāh knoweth all that ye do.”³¹⁶ Some scholars have related from him that when he heard that certain persons took the oath of allegiance with the Prophet (pbuh) they resolved that they would not ask anyone for anything. Thus, when a person’s stick fell to the ground he would not ask anyone to pick it up. Abū Ḥamza said, “O my Lord, these persons had entered into the compact with your Prophet after they had seen him, while I am entering into this compact with You that I will not ask anyone for anything.” He then went as a pilgrim from Syria towards Mecca ... and so on up to the end of the story. This too is from the category of adopting the loftiest form of knowledge, for he resolved to do something that someone better than him had resolved to do. In this case, he is following a foundational principle of the *shariʿa*. It is for this reason that when Ibn al-ʿArabī narrated the story, he said, “Here is a man who after concluding the compact with Allāh was found to fulfil it to the extent of completion and perfection. Follow his path, for if Allāh wills you will be guided.”

The same applies to entering an area full of beasts of prey or entering a forest without provision. It has been elaborated in the *Book of Ahkām* that there are people for whom the existence or non-existence of the causes is the same. It is Allāh who assigns consequences to causes, and He is the creator of the effects. For a person who is in this state, the existence of the consequences is the same as their non-existence. He therefore does not have a fear like the fears of the creation, nor does he have hopes like the hopes of creation, because there is no fear and no hope except with Allāh. Accordingly, it does not amount to voluntarily casting oneself into destruction. It would be so if he believed that he had not made any provisions against destruction, and that if he went near the beasts he would die or he would not die if he did not. Nevertheless, al-Ghazālī has stipulated in the case of entering a forest without provisions the exercise of patience and consumption of vegetation. All this pertains to the rule of normal practice.

Perhaps you can find an explanation in all that issues forth out of the activity of saints, those who were confirmed and not accused, in so far as it pertains to the rules of ordinary occurrences. In fact, God willing, you will not find it contrary to this.

Sub-Issue: Things Not in the Category of the Ordinary

If what they have based their acts on is not within the category of the ordinary, like illumination, then will the rule applied to them be like the one applied to those relying on the ordinary, in so far as they are required to rely on what the ordinary people rely on? In the alternative, will they be treated in another way that is beyond the recurring practices prevalent among people, even though their acts are apparently opposed to the ordinary, because relying on the illumination of the unseen is compliance rather than opposition.

The continuous presumption, in accordance with what was established in the tenth issue and what is prior to it, is that they should not have an exclusive rule, rather they should be asked to have recourse to the rules of those who follow ordinary practices, and the trainer should always require this of them. The discussion that has preceded points to all this. In the evidence for this are various meanings:

First: if the legal rules (*ahkām*) had been laid down on the basis of the extraordinary in practices, there would have been no (stable) principle, and the subject would not have been able to follow it had there been such a principle. The acts would all have been rendered into compatible and opposing possibilities; for each interpretation a ruling of validity and invalidity would be possible. Thus, no one would be able to issue any ruling for an act having two possibilities. In such a case, the rule of reward and punishment cannot be given, nor of respect or degradation nor of protection of life or its ruination, and no judge would be able to issue a ruling. Anything that has this nature does

not qualify for legislation on the assumption of considering interest, which is what the *shari'a* has been ordained for.

Second: extraordinary matters are not suitable for becoming a basis for constructing rules on them, because they are specific to a particular group. If they are specific, they cannot be applied to others; therefore, apparent general rules do not apply to them. Likewise, they cannot be applied to between them and others when the others are not from their group. The reason is that it is not valid to apply a ruling based on the extraordinary to those who do not fall under the extraordinary by agreement of the two parties; I mean, in fixing general rules. The judge and the ruler are not permitted to give a ruling for a saint based on his illumination, nor is a ruler to give a ruling of his own accord for a person who is not a saint without having recourse to the apparent ordinary causes, and he cannot even do so for a dispute brought to him by two saints.

Third: if it is assumed that the laws do not include them then this is different from what was proved about the *shari'a* that it has general rules for all creation and under all circumstances. How can this not be when they maintain that a saint is liable to commit errors and that sins can be attributed to him. There is no act that will not be *prima facie* called a sin whose apparent form opposes the apparent *shari'a*. It therefore cannot be validly established that this extraordinary act, which does not conform to the apparent *shari'a*, is valid when the probabilities are eliminated. This is the third meaning.

Fourth: the best of creation for this purpose was the Messenger of Allāh (pbuh), followed by the Companions (God be pleased with them). There is not a single thing that he did that was of this type without the *shari'a* stating that it was specific to him and could not be extended to others. In matters that were not of this type he denied the statement, "Allāh permits for His Prophet what He wants" as well as the statement, "You are not like us, for Allāh has forgiven you your past sins and those that are to come." He became angry and said, "I hope that out of you I am the one who is most afraid of Allāh and the one who is most knowledgeable of what is to be avoided."³¹⁷ Recovery of health was sought through him and through his prayer,³¹⁸ while it is not established a woman's except that of his wife or possessions of the right hand. Women used to take the oath of allegiance, but a woman's hand never touched his.³¹⁹ He used to undertake acts on the basis of the apparent, even though he knew about them. Certain things have already been mentioned. It was he who laid down the principles without making a distinction between saints and others. He was the most worthy (of the distinction) if a rule for giving exemption to the saints and wonder-workers was in order. Likewise the Companions (God be pleased with them) after him and their good Followers, for they were the real saints and the most deserving of merit.

In the story of al-Rubayyi' there is an elaboration of this when her spiritual guide or whoever it was said, "By Allāh, her tooth will not be broken" whereas the Prophet (pbuh) had said, "What is prescribed by Allāh

is retaliation.” The Prophet (pbuh) did not deem it sufficient that there are among Allāh’s servants those who when they swear an oath in Allāh’s name their oath is upheld by Allāh. Thus, he was hoping that the matter should be settled so that the effect of the oath be undone, however, he inclined towards *qiṣāṣ* (retaliation), in which there is extreme suffering, until he who had the right granted pardon. It was then that the Messenger of Allāh (pbuh) said, “There are among Allāh’s servants those who when they swear an oath in Allāh’s name their oath is upheld by Allāh.” He explained that this oath was upheld by Allāh; however, he did not issue a ruling until the basis became apparent, and that basis was pardon. In worldly terms, pardon gives rise to a cause that does away with *qiṣāṣ*.

Fifth: it is usual that the *aḥkām* of the extraordinary oppose the rules of the *shari‘a*; therefore, they cannot be brought up and affirmed, even if they grow up like hair, for they are acts that go against the lawful, and they contract the interests laid down for them. Do you not notice that the Messenger of Allāh (pbuh) was aware of the hypocrites and their essence, and he also knew about the mischief-mongers. Nevertheless, he forbade that they be slain due to an obstacle that had high priority for consideration. He said, “There should not be talk that Muḥammad kills his companions.” In the same way is eliminated the application of the rules of the extraordinary to those who practise it so that no one who lacks such experience should come to believe that for the Sufis there is a different *shari‘a*. It is for this reason that the jurists rejected the Act of Abū Yazīd³²⁰ (God be pleased with him). The view that permits the singling out of individuals practising the extraordinary for the application of rules that lie outside the rules of practices for the masses is an opinion that creates doubts in the heart, and is to be avoided under the law. It is not proper that they be exclusively provided in addition over the law of the masses. Further, those who are shackled with them have upheld the view of permissibility, strengthening their view with whatever they hear about them. This led them towards unbecoming discourse.

God forbid. The saints are free of these extraordinary modes. Nevertheless, the discussion has proceeded towards the probing of this meaning, and it has become known about them that they preserved the boundaries (*ḥudūd*) of the *shari‘a* both inward and outward, abiding by the rules of the *Sunna* as is required and protecting its pursuit. Deviation of understanding, however, in their case during this period and that before it, has created different views about their state. It is for this reason that the discussion has focused on these issues until, with the power of Allāh, their objectives came to be understood, providing a standard through which their state can be measured, yielding the reality behind their exemplary methods. May Allāh grant them the benefit of this and make others benefit from them.

Thereafter, we turn to the completion of the issue, and say:

Having access to the unseen or valid illuminations does not prevent the application of the legal rules for ordinary practices. The model in this was

the Messenger of Allāh (pbuh), and thereafter the practice of the worthy ancestors. Likewise, upholding of extraordinary practices does not require the structuring of ordinary (apparent) legal rules on them. The Prophet (pbuh) was infallible, due to the words of the Exalted, “And Allāh will defend thee from people”,³²¹ and yet he wore a coat of (chain) mail and a helmet (in battle), and took precautions that it was customary to take. This did not bring him down from the highest status to one that was lower than it; in fact, it was the highest status.

What has been mentioned about the recurrence of happenings and their absence with respect to the power of Allāh does not prevent the application of legal rules to the recurring practices either.

It has preceded that the Companions (God be pleased with them) had attained a high status in *tawakkul* (placing trust in God), and in considering the blessings to be coming from the Benefactor not from immediate causes. Despite this, they did not give up the bringing about of ordinary causes, which had been recommended. Even after this, the Prophet (pbuh) did not allow them to adopt a state that extinguishes the rule of the causes requiring the disturbance of practices. This indicates that they (the ordinary laws) were the primary rules that were brought down by the *shariʿa*. The reason is that indulging in extraordinary practices is not a position that has to be maintained; rather, it is the subject matter of *rukhsa* (exemption), as has preceded. Have you not noticed the saying of the Prophet (pbuh), “Tie it up (the camel), and then place your trust in Allāh.”³²² The Sufis who had attained perfection brought about the causes due to obedience to the practice of the Messenger of Allāh (pbuh). They kept in view that Allāh’s formation of the nature of His creation on the basis of recurring prevailing practices elaborates the point that the purpose of the *shariʿa* is to bring the subjects under the authority of the legal rules for practices. Accordingly, they were not about to relinquish the best act for something else. As for the story of Khidr (pbuh) and his words, “I did not do so on my own authority”, both indicate that he was a Prophet. This is what a group of jurists have upheld on the basis of this statement. It is permitted for a Prophet to rule direct according to the requirements of revelation without any ambiguity. If it is conceded then it is the core issue, whatever the incident, but it is not prevalent in our *shariʿa*. The evidence for this is that it is not permitted in this religion for a saint or someone else who is not a prophet to kill a minor who has not yet reached puberty, even if it is known that he was a disbeliever by his very nature, that he would never believe, and that if he lived he would oppress his parents and terrorize them into disbelief. He cannot do so even if the permission comes to him from the unseen. The reason is that the *shariʿa* has already laid down the commands and prohibitions. The apparent meaning of this story is that it was laid down in accordance with the requirements of another *shariʿa* and in accordance with the instructions and guidance meant for Moses that there is still another realm of knowledge and other issues that are not yet within his knowledge.

It is not proper according to the *shari'ca* that each report that the saint receives from the unseen be acted upon. In fact, these are of two types. The first is one that opposes the apparent *shari'ca* and which is not proved valid upon recourse to it. It is not valid at all to act according to this report. The second is one that does not oppose the apparent *shari'ca* when acted upon, and if some opposition is visible in it then recourse is to be had to the *shari'ca*. This type can properly be acted upon. Its elaboration has preceded.

If this is established, then the correct path to be trodden, which the trainer should implement, and towards which the efforts of those treading the path should be directed, is the path of the Chief of the followers, the Messenger of Allāh (pbuh). This is closer to moving out of the requirements of seeking personal benefit, and the best for seeking firm ground. It is safer that the one treading pursues this path and follows it. Allāh knows best.

The Sixteenth Issue: Types of Recurring Practice

The recurring practices (habits) too are of two types with respect to their coming into existence. First are general practices (habits) that are not replaced in accordance with the times, regions and circumstances. These are like eating and drinking, happiness and sorrow, sleep and waking up, inclining towards what is suitable and being repelled by what is repulsive, utilization of things that are good and give pleasure, avoidance of what is painful and injurious, along with other such things. The second type consists of those practices that differ in accordance with the times, regions, and circumstances. These are like forms of dress and residence, leniency in strictness and strictness in leniency, procrastination and timeliness, laziness and efficiency in matters, and other things like these.

As for the first, it is through it that a definitive ruling is issued against the people of the past times and past generations that the practice of Allāh applies in this way and manner to all creation and there is no general change in it. Accordingly, what is prevalent in the present times was also applicable to the previous times and will also be applicable without qualification in the future, irrespective of the practice being existential or legal.

As for the second, it is not valid at all to give a ruling about it on what has happened in the past, unless an external evidence is adduced about such conformity. In such a case, the judgement passed on what happened in the past will be on the basis of this evidence, and not according to the prevailing practice. Likewise, for the future too. It is the same whether the practice is existential or legal.³²³

We have said this because the first type pertains to universal and eternal instincts on which this world is built, and it is on these that the interests of creation are erected, as has been revealed through induction. It is in conformity with this that the *shari'ca* has been laid down. This universal rule

is going to stay until Allāh inherits the earth and those who are on it. It is a practice about which an evidence has been adduced that it is known and is not probable. As for the second type, it pertains to practice that belongs to the particular and is included within the practice that is universal. It is this type with which probability is associated and not certain knowledge. When this is the situation, it is not valid to pass judgement on the basis of the second about what has moved into the past, due to the likelihood of alteration and substitution, as distinguished from the first type.

This principle is needed for passing judgement on what the people of the past practised, so that it can be a proof against the later. The experts of *uṣūl* use it to a great extent to rely upon it and to refer general rulings to it. Such use, however, is not always sound, nor is it always improper; rather the matter needs a classification as has preceded. A third category arises out of the two types about which there is ambiguity: Is it (this third type) to be linked to the first so that it amounts to proof or is it to be associated with the second so that it does not furnish proof?

The Seventeenth Issue: Obedience and Disobedience Linked to Interests

The underlying meaning of laying down the *shariʿa* by the Lawgiver is that obedience and disobedience are allotted significance on the basis of the significance of the interests and injuries arising from them. It has been understood from the *shariʿa* that the most significant interests are those that apply to the five necessities considered by each nation. The most significant of injuries are those that attack and disturb these interests.

The evidence of this is the warning issued about disrupting them, as in the case of disbelief, homicide and what relates to it, unlawful sexual intercourse, theft, drinking of wine and things that refer back to these – that is, all those things for which a *ḥadd* penalty is prescribed or a warning issued. This is different from what refers to the supporting needs or complementary values, for these have not been the object of a warning in themselves, nor have they been exclusively associated with a *ḥadd*. When this is the case, then the underlying meaning refers to the matter that is a necessity. Induction elaborates all this; therefore, there is no need for adducing an evidence for this.

Nevertheless, interests and injuries are of two types. First, those through which the world is maintained or vitiated, like the saving of life as an interest and its destruction as an injury. Second, what leads to the perfection of this maintenance or vitiation. This second is not at the same level; rather, there are different levels. Likewise, the first has different levels. When we look at the first, we find that *din* is the most important of all things. It is for this reason that a lower priority is given to life, wealth and others in comparison with it. This is followed by life, for which reason a lower priority is accorded

to progeny, intellect and wealth. Some jurists have, therefore, maintained that if someone is coerced to commit unlawful sexual intercourse, he should save his life though this act. If a woman is subjected to coercion and apprehends death, and she does not find anyone who will feed her except by submitting to sexual gratification, then she is allowed to do so. The same applies to the remaining necessities. Thereafter, when we look at sale with hazard (*gharar*), for example, we find the injury in acting upon it at different levels. Thus, the injury in selling the foetus of the foetus (future sale) is the same as selling the foetus within the mother's womb, where the mother is present. Likewise, the sale of the foetus in the womb is not the same as selling by description when it is possible to examine the commodity without difficulty. The same applies to interests that take precaution against these things. Accordingly, if obedience and opposition arise from the interests and injuries in a matter pertaining to the necessary universal, the obedience is linked to the pillars of religion, while a major disobedience with major sins. If they arise from a particular, then obedience is linked to the supererogatory and associated merits, while minor disobedience is linked to minor sins. Major sins with reference to other major sins are not seen through a single standard, and so also a pillar with reference to all things considered pillars are not seen through a single standard. In the same way particulars with reference to obedience and disobedience are not judged through a single standard, rather each has a standard that is compatible with it.

The Eighteenth Issue: Basis of Worship Is Ritual Obedience

The basis for laws of worship (*ʿibādāt*) with respect to the subject is ritual obedience, rather than turning to rationalized underlying meanings. The basis for laws of practice is recourse to rationalized underlying meanings:

First: several things indicate this:

Among these is induction (*istiqrāʿ*). We have found that ritual purification extends beyond the location where impurity is found.³²⁴ Likewise, the five prayers are associated with particular acts and particular postures; if they move out of these they will no longer be acts of worship. We find that acts leading to them are determined by what they lead to, and a particular remembrance (*dhikr*) is required for a particular form, when it is not required for another form. Ritual purification is exclusively linked to water of purification when such purification may be possible otherwise. *Tayammum*, in which there is no physical purification, acts as a substitute for purification with water. The same applies to all acts of worship, like fasting, pilgrimage and others. We understand that the general wisdom of ritual obedience is to be bound by the commands of Allāh, the Exalted, in the individual instances by devotion and focusing on His supreme majesty. This general determination does not yield a particular *ʿilla* (underlying reason) from which we can derive a particular

rule. Had this been so particular commands would not have been laid down for us, rather we would have been commanded to undertake mere glorification through what is determined and what is not determined. One opposing what had been determined would not become blameworthy, because glorification would have been attained in accordance with the inner resolve of the person. The matter is not so by agreement. We therefore come to know definitively that the primary legal purpose is to give ritual obedience to what has been specifically determined, and what is beyond this is not the intention of the *shariʿa*.

Second: had the purpose been to provide latitude in the interpretation of ritual obedience in accordance with what is determined and what is not determined, the Lawgiver would have provided a manifest evidence for it. He has provided such an evidence for latitude in the interpretation of human practices so that with their help we do not remain confined to what is expressed in the texts to the exclusion of what resembles it or is close to it or coincides with it in a meaning that emerges from what is stated in the texts. Such a latitude would have become available in the different categories of acts of worship as well (had it not been for ritual obedience). When we do not find this to be so – rather, it is the opposite – we get the indication that the purpose is to remain confined to what has been specifically determined unless it becomes evident through the text or consensus that there is an underlying intended meaning in certain cases, in which case there would be no blame on one who follows such meaning. This, however, is rare. Consequently, it cannot be the underlying principle. The principle (basis) is what is general for this category and is predominant in this area.³²⁵

Further, what is compatible (*munāsib*) in this area is limited in number according to the jurists and there are no parallels for it, as in the case of hardship for shortening of prayer during a journey as well as not fasting and combining of two prayers and so on. Consequently, most of the underlying reasons that can be rationalized at the level of the genus cannot be rationalized at the level of the particular, as in the words of the Prophet (pbuh), “He made an error and therefore prostrated” and³²⁶ “Allāh will not accept the prayer of any one of you if he is in a state of impurity, until he performs ritual ablution.”³²⁷ Then there is a proscription from him about “prayer at the two ends of the day”,³²⁸ for which he gave the underlying reason that at the ends of the day the sun is between the two horns of Satan. Similar reasoning is used by those who undertake comparative legal reasoning in the case of analogy on ablution for *tayammum* for purposes of stipulating intention for *tayammum* – that is, it is purification that extends beyond its object of obligation – therefore, *niyya* is obligatory in it based on the analogy for *tayammum*. There are other cases too like these in which an apparent, stable and compatible underlying meaning is not indicated, which can become a suitable basis for constructing a rule upon it in an undisputed way. Here the rule is based on a method called

shabha (type of analogy), which is not agreed upon by those who have a view, and only those use it for analogy when they cannot find anything else besides it for such analogy. If an apparent underlying reason (*‘illa*) is not verified for us, one for which the obvious method of discovery should testify, then the most reliable element to which recourse should be had is confinement to what has been expressly determined without extending it to other things. The reason is that when we undertake induction through the *shari‘a*, we find it revolving around ritual obedience in the category of acts of worship. Thus, this is the basis for it.

Third: in the past periods, those who apply their minds to such matters have not given attention to the various interpretations of ritual obedience, as they have given to rationalized meanings in human practices. I have found most of them going astray in this case, and they have been treading on different paths for which reason changes have occurred in what has remained of the earlier scriptural laws. This evidently indicates that reason is not independent in ascertaining the underlying meanings and forms; therefore, we had recourse to the *shari‘a* for this purpose. When this was the case, the people of the earlier periods came up with an excuse due to the absence of guidance. The Exalted said, “Nor would We punish until We had sent a messenger (to give warning)”³²⁹ and He said, “Messengers who gave good news as well as warning, that mankind, after (the coming) of the messengers, should have no plea against Allāh. For Allāh is Exalted in Power, Wise.”³³⁰ The plea (proof) here is what the *shari‘a* established in removing liability for being required to do the impossible. Allāh knows best.

If this is established, there is no option other than having recourse, in this category, only to what the Lawgiver has determined, which is the real meaning of ritual obedience. It is for this reason that one who relies on mere following here has a greater priority for spiritual reward, and it is he who is properly following the method of the worthy ancestors. This is the opinion of Mālik (God bless him) for he did not turn to mere attaining of cleanliness until intention, along with absolute water, was stipulated, even though cleanliness could be attained without these conditions. He also held that prayer is not established without *takbīr* at the start and salutation at the end. He prohibited the payment through valuation in *zakāt*, while he restricted himself to mere number in expiation. There are other examples like these that indicate huge extremes in the case of acts of worship, which require confinement to what is stated in the text or what is exactly similar. It is, therefore, obligatory to adopt ritual obedience in this type of law without recourse to underlying meanings. It is a basis on which law are to be structured and an essential element to which recourse is to be had.

Sub-Issue: The Basis in Human Practices Is to Turn to Underlying Meanings

This is done due to different reasons:

First: induction. We find that the Lawgiver intends that interests be secured for the subjects, and legal rules meant for practice are coterminous with these interests. You will see that a certain thing is prohibited under certain circumstances in which no interest is found, but when an interest is found it becomes permitted. Thus, exchanging a *dirham* for a *dirham* with a delay is prohibited when it is in the form of a sale (*bayʿ*), but it is permitted by way of *qard*. The sale of moist dates for dry dates is prohibited in so far as it constitutes pure *ribā* (interest) and *gharar* (hazard) without serving any interest, but it is permitted when there is a preferred interest.³³¹ We do not see this meaning in the category of acts of worship as we understand it for human practices. Allāh, the Exalted, has said, “In the law of equality there is (saving of) life for you, O ye men of understanding”³³² and He said, “And do not eat up your property among yourselves for vanities.”³³³ A tradition says, “The judge (*qāḍī*) is not to render judgement when he is angry.”³³⁴ The Prophet (pbuh) said, “No injury is to be caused and none is to be borne”,³³⁵ “A murderer will not inherit”,³³⁶ “He forbade the hazard (*gharar*) sale”³³⁷ and “Each intoxicant is prohibited.”³³⁸ The Qurʾān says, “Satan’s plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allāh, and from prayer: will ye not then abstain?”³³⁹ There many other such evidences. All these evidences indicate – rather, state expressly – that interests are taken into account for the servants, and that permission revolves with such interests, as has been elaborated in the modes of discovering the *ʿilla*. What this indicates is that in human practices the Lawgiver bases his legislation on rational meanings.

Second: the Lawgiver has gone to great lengths in the elaboration of underlying causes and rationale for legislation in the category of human practices, as in the preceding illustrations. In most of the underlying causes it is the compatible (*munāsib*) that is employed, which is something that is readily accepted when presented to the mind. We understand from this that the Lawgiver intends the pursuit of meaning in such cases, and not confinement to the occasions in the texts, as distinguished from the category of worship, as the known purpose in that is different from this. Mālik (God bless him) went to great lengths in this, so much so that he upheld the principle of *maṣāliḥ mursala* and he also upheld *istiḥsān*. It is transmitted from him that he said, “It is nine-tenths of knowledge”, as will be coming up, God willing.

Third: relying on underlying meanings was well known in earlier periods, and all thinking persons relied on them. Thus, they applied this to their interests and acted upon the universal meanings on the whole and this became continuous for them, whether these were the wise philosophers or others besides them. They fell short, however, as a whole, with respect to details. The *shariʿa* then came to complete the noble values. This indicates that the laws in

this category were laid down to order the details according to their governing principles that were already known. It is from this perspective that the *shariʿa* acknowledged a number of rules that were prevalent in the days of the Jāhiliyya, like *diyya* (blood-money), *qasāma* (collective liability), the congregation on the day of Arabs, which is Friday, for a sermon and remembrance, *qirāḍ* (partnership), the clothing of the Kaʿba as well as many other things that were dear to the people of the Jāhiliyya. In addition to this, it included good practices and noble traits that are readily accepted by reason. There are many such examples. In matters of sound ritual obedience there were few matters for them and these had been acquired from the religion of Abraham (pbuh).

Sub-Issue: Ritual Obedience in Human Practices

If this is determined then the usual method in human practices is to have recourse to the underlying meanings. When ritual obedience is found in these, it is necessary to submit and to confine oneself to what is stated in the texts, like the demand for dower in marriage, slaughtering a consumable animal at a specific point (of the neck), observing the determined shares in inheritance, the number of months in waiting periods resulting from divorce or death, along with other such things that do not provide a scope for reason to comprehend the particular interests preserved so that the meanings can be extended to other cases. We know that the acknowledged conditions for the guardian, dower and the like are meant to distinguish marriage from fornication, that the prescribed shares in inheritance are ordered in the order of relationship with the deceased, while the provision of waiting periods is to ascertain the vacation of the womb so that lineage does not get disrupted. These are pleasing matters, just as devotion, exaltation and glorification are the basis for prescribing acts of worship. These matters do not accept the validity of analogy (*qiyās*) as a basis for them. Thus, it cannot be said that if the distinction between marriage and fornication can be attained through other means, for example, then such conditions need not be imposed, or when the vacation of the womb can be ascertained otherwise there is no need to have legislation for waiting based on periods or on months. The same applies to other such things.

Suppose it is said: Can an *ʿilla* (*ratio legis*) be found for these matters of ritual obedience so that the purpose of the Lawgiver can be understood?

In response it will be said: As for matters of ritual obedience, the required *ratio* is merely “being bound”, without increasing or decreasing this idea. It is for this reason that when ʿĀʾisha (God be pleased with her) was asked about the delayed performance of fasts missed on account of menstruation as compared to missed prayers, she said, “Are you a Ḥarūriyya?”³⁴⁰ Thus, she conveyed to her that such questions were not to be asked (about matters of ritual obedience). The reason is that ritual matters are not laid down in a form that

their specific rationale can be understood. He then said, “We were commanded to undertake delayed performance of fasts, but were not commanded to do so for prayers.”³⁴¹ This provides a preference for ritual obedience as compared to the rationale of hardship. Then there is the statement of Ibn al-Musayyib (God be pleased with him) on the equivalence of the fingers with respect to blood-money, “It is a *sunna*, O son of my brother”, which is sufficient. The meaning of this ratiocination is that there is no underlying *‘illa*.

Human practices and most ritual matters do have a general understood meaning, which is the securing of various interests. The reason is that if the imagination of the people is left to wander it will become dispersed and there would be no stable rule, making recourse to a basis in the *shari‘a* difficult. Accordingly, the Lawgiver has set determined limits for *hudūd* (fixed penalties), and causes too which cannot be extended. For example, there are eighty stripes for false accusation of unlawful sexual intercourse, a hundred stripes and exile of a year for unlawful sexual intercourse for an unmarried person, the cutting of the hand from wrist for stealing a determined minimum amount, and penetration is deemed a cause for various rules. The same applies to months and menstrual courses for waiting periods, and a minimum scale and passing of a year for *zakāt*. What has not been fixed has been left as a trust for the subjects, which is expressed by the term *sarā‘ir* (internal matters), like purification for prayer, fasting, menstruation and period of purity, as well as all things that cannot be referred to a determined and apparent rule. These are matters about which it is assumed that the Lawgiver did intend them.

The principle of *sadd al-dharā‘i‘* (blocking the lawful means to an unlawful end) relies on this idea, but it has two aspects. The first is from the perspective of its splitting into multiple branches and spreading out when we pursue it, as is the case in Mālik’s school for example, when it is established about most of the obligations that they are passed as a trust to the subject. On this basis, it is not necessary to turn away due to it from what is expressly stated in the texts. The second aspect is that it has a number of rules that rely on the sources even if the issues branch out. It has been understood from the law that it can be employed in general terms; therefore, it is to be applied to the extent possible to its object. The Lawgiver has forbidden certain things because they lead to other things, and become a means to things that are prohibited. This is a principle that is definitive on the whole, and it was adopted by the worthy ancestors; therefore, it must be considered. There are jurists who have relied on a third aspect. They restrict what is disputed to what becomes apparent. They authorize the judges to make a rule for the interest of the people in things that have been communicated to them, while they delegate what has not been communicated to them to the trust of the subjects.

The Nineteenth Issue: Matters of Ritual Obedience Cannot Be Extended

All things in which the ritual obedience has been acknowledged cannot be expanded into other (new) issues. For all things in which an underlying meaning has been acknowledged and not ritual obedience, it is essential that an element of ritual obedience be acknowledged in them as well, due to several reasons:

First: the meaning of demand and option³⁴² are binding for the subject in so far as he is a subject, whether or not he understands the reason for which the rule was laid down. This is distinguished from the acknowledgement as that is non-binding. He is a subject slave; therefore, when his Master commands him, it is binding on him to obey the command by agreement of the thinkers. This is different from interest (*maṣlaḥa*) as acknowledging it is not binding in so far as he is a subject slave, according to the view of the scholars. If this is the case, then ritual obedience is binding and there is no choice in it, where the acknowledging of the interest is the choice. A thing in which there is a choice, it is rationally valid to substitute it with something else. When a command or prohibition is laid down through the *shariʿa*, it is rationally not valid to substitute them; it is impossible. Ritual obedience arising through demand or option is binding in the absolute sense, while the acknowledgement of interests is non-binding in the absolute sense, according to those who make the refined and the most suitable binding.³⁴³ Further, it is binding according to those who make the more suitable binding, and they uphold good and evil as rationally true. Thus, when the Master commands His slave due to an interest to be secured, such interest is rationally the underlying cause of the command, which makes obedience binding by the mere command, because opposing it is evil (bad). This is also true from the perspective of acknowledging the interest, because its attainment is rationally obligatory on this assumption. In their view, therefore, both types are binding. Not one out of them says that opposition by the slave of the Master's command, while ignoring the interest served, is not evil. In fact, it is evil in their view, and that is the meaning of ritual obedience.

Second: when we understand from demand and choice that there is an independent underlying wisdom in the legislation of the rule, it does not necessarily follow that there is no other interest – that is, a second or a third or more than that. We have understood a worldly interest, which is suitable for the legislation of the legal rule; thus, we have understood it through legal permission, but we have not understood the exhaustion of the interest and the rule that has emerged. If we have attained neither certain knowledge nor probable knowledge, it is not proper for us to be certain there is no other interest behind the rule that has appeared to us, because that would amount to being certain about the unseen without an evidence. This is not valid. What remains for us is the possibility of another wisdom on the basis of which the

rule has been legislated. We, therefore, move from this position and rely on ritual obedience.

Suppose it is said: If this is valid then we cannot give a ruling about extension under any circumstances. If we have permitted the existence of an underlying wisdom and another interest, we cannot be sure that the rule is based on this alone, on the possibility that it may be an element of the underlying cause, or due to the possibility that the issue is devoid of this underlying wisdom that we ignored, even if the underlying cause that we know is to be found in it. If this is possible, it is not valid to undertake linking and deriving of detailed rules until we verify that there is no *ʿilla* other than the one that has appeared (for us). There is no way of knowing this. Likewise, there is no way of undertaking analogy or of rendering judgement that this rule has been legislated for this *ʿilla* (underlying cause).

The response is that a ruling about extension of meaning does not negate the possibility of ritual obedience. The reason is that analogy has been proved a valid legal (*sharʿi*) evidence, and it is not legal except in the manner that we adopt in practice. This is so because it is an *ʿilla* that appears to us to be independently suitable for the legality of the rule, and we have not been obligated to negate what is besides it. The experts on *uṣūl*, who permit an *ʿilla* opposed to what appears to them to be the *ʿilla*, or deem what has appeared to be a part of the *ʿilla* and not the complete *ʿilla*, but they are persuaded that what has appeared can independently serve as the *ʿilla*, or is sound as an *ʿilla*, then they deem it as sufficient for the extension of the meaning. Further, the majority of the jurists have permitted the discovery of more than one *ʿilla* for a single rule, and each one of them acts independently, and all of them are known, then they use one and turn away from the others. This does not prevent analogy, even though it is possible that the other may or may not be present in the case to which it is extended. If this is not forbidden in what has appeared, then it is obvious that it should not prevent it in what has not appeared. When this is established, the question loses its basis. What has appeared (to be the cause) is to be used as the basis until the contrary is made evident, and this burden is not placed on us.

Third: the interests underlying obligations imposed on us by the Lawgiver are of two types. First are those whose knowledge it is possible to attain through the well-known modes of discovery, like consensus, text, indication, process of elimination, compatibility and others.³⁴⁴ This is the type that is obviously one on which we base the extension of rules (to new cases). We say that the legal validity of the rules is due to these meanings. The second type consists of those meanings that we cannot know through these customary methods and that cannot be known except through revelation, like those rules about which the Lawgiver has informed us that they are for abundance and ease and are meant for the superiority of Islam. Likewise those rules about which He has informed us that, when opposed, they lead to punishments, the empowerment

of the enemy, domination and apprehension, famine, as well as all the other forms of worldly and otherworldly torment.

It is known through the *shariʿa*, on many occasions, that there are other interests that the subject cannot comprehend, is not able to derive them from the texts, nor is he able to extend their meaning to other cases, because he does not know about the existence of the other case, which is the issue in which this *ʿilla* is to be found, then there is no way of acknowledging it for purposes of analogy. He then relies without wavering on ritual obedience alone. The reason is that no similarity has appeared between the basis from which the underlying cause is to be discovered and another case, except what can be said to fall under the absolute or general meaning of the *ʿilla*. It is here that the rule, whose reason is being discovered, is acquired for purposes of ritual obedience. The meaning of ritual obedience being reliance on what the Lawgiver has fixed, without any addition or diminution.

Fourth: if a questioner asks the judge, “Why do you not render judgement between the people when you are angry?” and he responds by saying, “Because I have been forbidden from doing so”, his answer would be correct. Likewise, if he says, “Because anger upsets my reasoning and that is the ground for the lack of a sound judgement”, his answer would be correct again. The first response is that of pure ritual obedience. The second is based on turning towards the underlying meaning. If it is permitted to combine the two and there is an absence of mutual negation, it is permitted to intend ritual obedience. If it is permitted to intend ritual obedience, it indicates that ritual obedience is found, otherwise it would not be valid to direct intention towards something that cannot be validly intended out of those that are absent or are probably existent or non-existent. If intention in the unqualified sense is valid, the object of intention is valid too. This is the meaning of ritual obedience, and this is what is demanded.

Fifth: the fact that an interest is interest depends on the intention within the rule. The same applies to the question whether an injury is an injury. This is specific to the Lawgiver, and reason has no role to play in this, based on the rule of declaring something good or evil. If it is the Lawgiver who has legislated a rule on the basis of some interest, then it is He who is determining it to be an interest, otherwise it would rationally be possible not to treat it as an interest. The reason is that all things, with respect to their initial formulation, are equal, and reason has no ruling on them for being good or evil. Accordingly, the declaration that an interest is an interest comes from the Lawgiver in the sense that reason verifies it and the heart is satisfied about it being so. Interests, therefore, in so far as they are interests, when examined turn out to be a matter of ritual obedience. Anything that is structured on ritual obedience can only be a matter of ritual obedience.

It is on this basis that jurists say that obligations consist of “those that are a right of Allāh”, and these refer to ritual obedience, and “those that are a

right of the individual.” They say about the second that it contains the right of Allāh as well, as in the case of the murderer, who when he is pardoned is to be awarded a hundred stripes and imprisoned for a year. In the case of murder by ambush they say that there is no pardon in it. In the case of *ḥudūd*, besides *qiṣāṣ*, when the complaint has been lodged with the sultan, as in *qadhf* (false accusation) and theft, there is no pardon in it even if the person whose right is infringed grants a pardon. The elimination of (the value of) what the slave girl is about to bring forth will not be accepted from the seller of the slave girl, nor will the waiving of the waiting period by one who has divorced a woman be accepted, even though the vacation of her womb is the right of this person. There are a host of other similar cases indicating the presence of ritual obedience even though the underlying meaning for which the rule has been laid down can be rationalized. In such a case, each obligation becomes a right of Allāh. What is for Allāh is for Allāh, but what is for the individual is also referred to Allāh, from the perspective of the right of Allāh being present in it, and from the perspective of the right of the individual due to it being the right of Allāh, because it is for Allāh not to grant a right to individuals at all.

Many jurists say, on this occasion, that “the prohibition requires nullity in the absolute sense”, whether or not the injury underlying the prohibition is understood, and whether or not the cause for which the prohibition is issued is negated.³⁴⁵ This is due to reliance on the prohibition by the proscriber, because it is His right. The termination of the object is the legal intention in the prohibition. As it is not attained, the act becomes a nullity in the absolute sense. This proves that no obligation is devoid of ritual obedience. If it is not devoid of it, then it is this towards which the intention is directed in purification and all acts of worship.

The obligations in which there is a right of the individual include those that are valid without the formulation of an intention. It is these in which we have been given to understand by the Lawgiver that there is a predominant part of the right of the individual, like the returning of deposits, misappropriated property, and obligatory maintenance payments. Among these are those that are not valid without an intention, and it is these for which we have been given to understand that they have a predominant right of Allāh, like *zakāt*, slaughter and hunting during pilgrimage. Those acts that are valid without an intention are not rewarded if performed without intention, but if they are performed with the intention of obedience, which is the intention of ritual obedience, they carry a reward. The same applies to acts of omission if omitted with an intention. This is agreed upon. Had these been pure rights of Allāh, and there had been no right of Allāh in them, no reward at all would be assigned. The reason is that the attainment of reward in them necessarily implies obedience in so far as these are acquired and commanded, and whatever is commanded brings nearness to Allāh. Each act of obedience, in so far as it is obedience to

Allāh, is an act of worship, and each act of worship is in need of intention. These matters then, because they are acts of obedience, require intention.

Suppose it is said: These acts have been commanded as pure rights of the individual, and the reward is attained from the perspective of the right of the individual, not that they are acts of obedience that bring nearness to Allāh.

The response will be: This is incorrect. Had this been correct, reward would have accrued without intention, because the right of the individual is attained by the mere act without intention, but reward is in need of intention for its attainment. Further, if reward could be attained without intention, the usurper would be rewarded if the usurped property was taken away from him by force. This is not so by agreement, even though the right of the individual is attained. The correct position is that intention is a condition for an act being an act of worship. Intention that is meant here is the intention of obedience to the commands and prohibitions of Allāh. As this is applicable to every act and omission, it establishes that in the acts of the subject there is a demand for ritual obedience as a whole.

This is the sixth evidence in the issue.

Suppose it is said: This necessarily implies that each act be in need of intention, and the act of one who does not formulate an intention is not valid, or that he is a sinner.

It will be said: It has preceded that acts in which there is the right of the individual, it is sometimes the predominant right, while on other occasions the aspect of ritual obedience is predominant. The act in which ritual obedience is predominant, then intention is conceded for it, and the act in which the right of the individual is predominant is attained without intention. The act here is valid without intention, but it does not amount to an act of worship. When the command is taken into account it is an act of worship from this aspect. Therefore, intention is necessary in it – that is, it does not become worship without intention, not that intention becomes binding in it or is needed in it; rather, the meaning is that intention in obedience converts it into worship. It is like giving a loan (without interest) to a Muslim, in obedience to a command, for the person's ease and facility, or he may give the loan for a worldly purpose. The same applies to sale and purchase, eating and drinking, marriage and divorce, as well as other things. It is on this basis that the worthy ancestors (God be pleased with him) zealously invoked intentions in acts, and they used to wait in all this until the formulation of proper intentions.

Sub-Issue: Implications of the Previous Principle

The above makes many things evident.

Among these is the fact that no legal rule (*ḥukm sharʿī*) is devoid of the right of Allāh, the Exalted. It is the right of Allāh over His servants that they worship Him and they do not associate others with Him. Worshipping Him

is obedience to His commands and compliance with His prohibitions in the unqualified sense. If something comes along in which it appears that it is the pure right of Allāh, then it is not so in the absolute sense; rather, it is the predominance of the right of the servant in worldly rules.

In the same way, in each legal rule there is a right for the servants, pertaining either to this world or to the next. This is based on the presumption that the *shari'a* has been laid down for the interests of the servants. It is for this reason that it is stated in a tradition, "The right of the servants over Allāh, if they worship Him and they do not associate anyone with Him, is that He will not give them torment (after this life)."³⁴⁶ It is the practice of the jurists to say about the right of Allāh that, as understood from the law, it is a right in which the subject has no option, whether or not the meaning can be rationalized. The right of the individual, on the other hand, is one that relates to interests in this world. The meaning of ritual obedience, in their view, is something whose meaning cannot be rationalized in details. The basis of acts of worship relates to the right of Allāh, while the basis of practices relates to the right of the servants.

Sub-Issue: Rights of Allāh and Rights of the Individual

Acts in terms of the right of Allāh and the right of the individual are of three types:

First: those that are pure rights of Allāh, like acts of worship. Their basis is ritual obedience as has preceded. If the act corresponds with the command it is valid, otherwise not.

The evidence for this is that ritual obedience relates to non-rationalization of meaning, and also that analogy cannot operate them. If the meaning cannot be rationalized, the indication is that it is the intention of the Lawgiver that acts be confined to what is determined by Him in the texts, and that they should not be extended to create new acts. If it occurs it conforms with the intention of the Lawgiver, and if it does not it goes against it. It has already preceded that opposition to the intention of the Lawgiver renders the act a nullity. Thus, non-conformity of the act with the command renders the act a nullity. Further, if we assume that absence of rationalization is not an evidence that we confine ourselves to what is determined in the texts, then freedom from liability is not realized, and freedom from liability can only be realized by a conforming act, not through an act that does not conform.

Prohibition in this is a parallel of the command. Prohibition implies that the act prohibited is not valid, either based on the rule that prohibition implies unqualified nullity, or on the ground that prohibition implies that the act prohibited does not conform to the intention of the Lawgiver. This is either in its base, like the addition of a sixth prayer or the elimination of one prayer, or it is in its attributes, like the recitation of the Qur'ān while bowing and in

prostrations. It may also be in the form of prayer on disapproved of timings, for had it been intended it would not be proscribed, and it would have been commanded or permitted. Permission is known initially through the intention of the Lawgiver; therefore, it cannot be extended (later).

If you find someone who considers a prohibited act valid, or a commanded act that does not conform, after its occurrence, then this is due to the lack of validity of the command or the prohibition in his view. In the alternative, it may not be a certain command or a certain prohibition. It may then be due to the opposition being related to a negating factor, like prayer in a usurped house, based on the view that upholds the validity of the vitiating factor. It may also be due to the deeming of the incident as one based on rationalization and determined interest; therefore, it will take its rule. It has already preceded that this is rare, and that ritual obedience is the foundation.

Second: this pertains to what is made up of the right of Allāh and the right of the servant, when the predominant right is that of Allāh. The rule of this too follows the first, because the right of the individual if it stands rejected is like one that is not acknowledged. Had it been acknowledged it would have been affirmed, but the assumption goes against this. For example, homicide in which the servant does not have an option to submit himself for being killed without there being a *sharʿi* (legal) necessity, like turmoils and so on. Thus, when you see a person validating a prohibited act or one commanded that does not conform after its occurrence, then it is due to the three factors mentioned above. The fourth factor is the evidence that it is the right of the servant that is predominant.

Third: this is about the act in which two rights participate and it is the right of the servant that is predominant. The basis for this is a rationalized underlying meaning. If the requirements of the command and the prohibition are followed properly then there is no ambiguity about the act's validity, due to the attainment of the interest whether it is of this world or next depending on the form of the act. If opposition occurs, then this needs to be examined, for which the basis is the attainment of the interest of the servant. The right of the individual may or may not be attained along with this interest, even if that is after occurrence, to the extent that the act conforms or even more than that. If it is assumed that it is not attained then the act is a nullity, because the purpose of the Lawgiver has not been attained. If it is attained – and its attainment has to be the consequence of another cause, not an act in opposition to the prohibition – then the act is valid and the implication of the prohibition is set aside with respect to the right of the individual. It is for this reason that Mālik (God bless him) validates the sale of a *mudabbar*³⁴⁷ slave when the buyer emancipates him, because the prohibition is found against the loss of emancipation. If it is attained (and in fact earlier) then there is no meaning in the prohibition of revocation (of the bequest) as far as the right of the slave is concerned. Likewise, a contract is valid where the right of a third person

is attached (to the subject matter), provided the third party waives his claim. The reason is that the prohibition was for the right of the slave, and if he gives his consent to the waiver then he has a right to do so. The examples of this category are many. Thus, if you see one permitting an act of opposition after its occurrence, it is due to one out of three reasons.³⁴⁸

The Twentieth Issue: The Blessings of Allāh

The world was created, so that the effect of the two handfuls (*qabḍatayn*)³⁴⁹ could be made manifest. It is based on the granting of blessings to the servants, so that they can acquire them and benefit from them. They should give thanks to Allāh for these blessings so that He can compensate them in the Hereafter too. This is in accordance with what has been elaborated for us by the Book and the *Sunna*. It requires that the *shariʿa*, which informs us about these two (blessings), be one that elaborates in absolute terms the aspect of giving thanks for each blessing and the aspect of utilization of the granted blessings.

These two purposes are most prominently indicated in the *shariʿa*. Do you not look at the words of the Exalted, “It is He who brought you forth from the wombs of your mothers when ye knew nothing; and He gave you hearing and sight and intelligence and affections: that ye may give thanks (to Allāh)”,³⁵⁰ “It is He Who has created you, and made for you the faculties of hearing, seeing, and understanding: little thanks it is ye give”,³⁵¹ “Then do ye remember Me; I will remember you. Be grateful to Me, and reject not faith”,³⁵² “So eat of the sustenance which Allāh has provided for you, lawful and good; and be grateful for the favours of Allāh, if it is He whom ye serve”³⁵³ and “And remember! Your Lord caused to be declared (publicly): ‘If ye are grateful, I will add more (favours) unto you; but if ye show ingratitude, truly My punishment is terrible indeed.’”³⁵⁴ Giving thanks (*shukr*) is the expending of what has been granted to you according to the pleasure of the Benefactor, which actually amounts to turning to Him in the context of the universal. In the context of the universal here means what is required by His pleasure in accordance with ability under all circumstances, which is also the meaning of the words of the Prophet (pbuh), “The right of Allāh over His servants is that they serve (worship) him and should not associate anything with Him (in this service).”³⁵⁵ In all this, acts of worship and human practices are the same.

As for acts of worship, they are the right of Allāh that does not admit of any association (partnership of another). Thus, they amount to turning to Him.

As for human practices, they too are the right of Allāh, the Exalted, from the perspective of the universal. It is for this reason that it is not permitted to declare prohibited any of the good things that Allāh has made lawful. Allāh has said, “Say: Who hath forbidden the beautiful (gifts) of Allāh, which He hath produced for His servants, and the things, clean and pure (which He

hath provided), for sustenance? Say: They are, in the life of this world, for those who believe, (and) purely for them on the Day of Judgment. Thus do We explain the signs in detail for those who know.”³⁵⁶ The Exalted also said, “O ye who believe! Make not unlawful the good things which Allāh hath made lawful for you, but commit no excess: for Allāh loveth not those given to excess.”³⁵⁷ He has prohibited the prohibition of good things, and has deemed it a transgression upon the right of Allāh, the Exalted. When some of the Companions (God be pleased with them) attempted to prohibit some lawful things, the Prophet (pbuh) said, “He who deviates from my *Sunna* is not of me.”³⁵⁸ Allāh, the Exalted, has also deemed blameworthy a person who prohibits on himself anything of the good things that Allāh has provided. He said, “It was not Allāh who instituted (superstitions like those of) a slit-ear she-camel, or a she-camel let loose for free pasture, or idol sacrifices for twin-births in animals, or stallion-camels freed from work: It is the disbelievers who invent a lie against Allāh, but most of them lack wisdom”³⁵⁹ and He said, “And they say that such and such cattle and crops are forbidden, and none should eat of them except those whom – so they say – We wish; further, there are cattle forbidden to yoke or burden, and cattle on which (at slaughter), the name of Allāh is not pronounced – forging a lie against Allāh’s name: soon will He requite them for they forged.”³⁶⁰ Thus, He blamed them for things that they invented to prohibit things related to animals and tilth, and that is the purpose of this explanation.

Further, in human practices there is the right of Allāh from the aspect of earning and utilization, because the right of other persons too in it is protected by the *sharī‘a*. The servant has been given no option, because it is the right of Allāh distributed through the right of another. The servant cannot extinguish his own right either, except in certain particulars, but he cannot do so at the level of the universal (that is totally). The servant’s own body is included in this right, because he does not have the authority over his body or his limbs so that he can destroy them.

The right of Allāh then is related to human practices from two sides. First, from the perspective of the initial universal ordainment, which is subsumed under the necessities (*ḍarūriyyāt*). Second, from the perspective of the detailed imposition, which requires justice among human beings and the operation of interests in accordance with the utmost wisdom. In all they amount to three types.

There is then the right of individual too in these human practices from two perspectives. First, the perspective of the next world, which is the recompense through blessings and the protection, as a result of it, from the torment of hell. Second, the taking of blessings in the most perfect way that is suitable for this world, but only in accordance with his state and personal requirements, as Allāh has said, “They are, in the life of this world, for those who believe, (and) purely for them on the Day of Judgment.”³⁶¹ All success lies with Allāh.

NOTES

- 1 Editor: This is another purpose of the Lawgiver in the promulgation of the *shari'a*. The other stated earlier is that the purpose of the *shari'a* is to secure the interests of human beings, as universals, pertaining to this world or the next.
- 2 Editor: A similar statement is given by the Author in his book *al-Itiṣām*, vol. 1, 343.
- 3 Qurʾān 51:56–57.
- 4 Qurʾān 20:132.
- 5 Qurʾān 2:21.
- 6 Qurʾān 2:177.
- 7 Qurʾān 4:36.
- 8 Qurʾān 38:26.
- 9 Qurʾān 79:37–39.
- 10 Qurʾān 79:40–41.
- 11 Qurʾān 53:3–4.
- 12 Qurʾān 45:23.
- 13 Qurʾān 23:71.
- 14 Qurʾān 47:16.
- 15 Qurʾān 47:14.
- 16 It has been mentioned by Ibn al-Jawzī in *Dhamm al-Hawā*, 18.
- 17 Editor: The learned editor says that here the Author is referring to the writings of earlier philosophers who advocated this in different ways.
- 18 Qurʾān 23:71.
- 19 Qurʾān 23:115.
- 20 Qurʾān 38:27.
- 21 Qurʾān 44:38–39.
- 22 Editor: That is, their desires will get mingled with their deeds coming before their acts. It is recorded by Mālik, *al-Muwaṭṭaʿ*, vol. 1, 173, from Yaḥyā ibn Saʿīd.
- 23 This tradition will be coming up later.
- 24 Editor: This means that he does not seek gain from this work but is granted his compensation from the treasury.
- 25 Editor: Al-Qarāfi has discussed the issue in his book *al-Furūq* that the judge is entitled to maintenance from the treasury, and that there is consensus on this issue.
- 26 Qurʾān 2:216.
- 27 Qurʾān 2:275.
- 28 Qurʾān 62:10.
- 29 Qurʾān 2:198.
- 30 Qurʾān 7:32.
- 31 Qurʾān 2:172.
- 32 The idea here is that when concern and regard for the other person is missing, the underlying wisdom is defeated. The inner instinct, called the motive here, tends to demolish the interests of other people. In such a case, the law comes down with deterrents and various forms of discipline to rectify the defect.
- 33 Qurʾān 38:26.
- 34 The tradition is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 516, Tr. No. 6622.
- 35 Qurʾān 39:3.
- 36 Qurʾān 20:132.
- 37 Qurʾān 65:2–3.
- 38 It is recorded by al-Khaṭīb, *Tārīkh*, vol. 3, 180.
- 39 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 340–41, Tr. No. 6502.

- 40 Qurʾān 4:6.
- 41 That is, in general.
- 42 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 74, Tr. No. 55.
- 43 Qurʾān 41:46.
- 44 Qurʾān 48:10.
- 45 It is part of a lengthy tradition that has been recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 1994–95, Tr. No. 2577.
- 46 Qurʾān 42:30.
- 47 Qurʾān 2:194.
- 48 Qurʾān 59:9.
- 49 It is recorded by Ibn Saʿd, *al-Tabaqāt al-Kubrā*, vol. 8, 67. It has also been recorded by others.
- 50 It is recorded by Mālik, *al-Muwattaʿ*, vol. 2, 997.
- 51 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 128, Tr. No. 2483.
- 52 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 3782.
- 53 For example, in the Battle of Tabūk, as recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 55–65, Tr. No. 27.
- 54 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 294, Tr. No. 1427.
- 55 Editor: It is a pointer to the words “his benefit is included in the whole.”
- 56 The tradition has been mentioned above, and is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 294, Tr. No. 1427.
- 57 Editor: That is, even though his intention is in conformity with the intention of the Lawgiver and does not oppose it, it has not taken such intention into account in his act so that he could be free of his whims.
- 58 Qurʾān 73:5.
- 59 It is part of a tradition that has already been mentioned earlier.
- 60 Qurʾān 88:2–4.
- 61 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 616–18, Tr. No. 3610.
- 62 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 618, Tr. No. 3611.
- 63 This occurs at the end of the previous tradition.
- 64 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. Nos. 2466 and 6009; Abū Dāwūd, *Sunan*, Tr. No. 2550.
- 65 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 3318; and Muslim, *Ṣaḥīḥ*, vol. 4, 1760, Tr. No. 2242.
- 66 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 3318; and Muslim, *Ṣaḥīḥ*, vol. 3, 1548, Tr. No. 1955.
- 67 Editor: That is, he is acting with an intention to act upon the universal, which is the securing of public not personal interests irrespective of the particular act being recommended or permitted, because the system will be disturbed by its neglect.
- 68 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, Tr. No. 1; and Muslim, *Ṣaḥīḥ*, vol. 3, 1515, Tr. No. 1907.
- 69 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 2371; and Muslim, *Ṣaḥīḥ*, vol. 2, 680–83, Tr. No. 987.
- 70 The payment of *zakāt* and other duties.
- 71 Part of the above tradition.
- 72 The same tradition as above.
- 73 Muslim, *Ṣaḥīḥ*, vol. 2, 888, Tr. No. 1218. It was the statement of ʿAlī (God be pleased with him).
- 74 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 364, Tr. No. 3335; and Muslim, *Ṣaḥīḥ*, vol. 3, 1303, Tr. No. 1677.
- 75 Editor: The ambiguity will be coming up, unless it is said that this is merely a word of caution from him and that the ambiguity will not remain after the answer is provided.
- 76 Editor: That is, he satisfies his own desire, because the thing is authorized.

- 77 Editor: The permitted means he chooses is one among several means.
- 78 Editor: This is the recommended category.
- 79 Editor: The consuming of carrion to save life is an obligation that is related to a usual act, which is preservation of life.
- 80 It is recorded by Abū ‘Ubayd in *al-Gharib*, vol. 2, 221; and al-Bayhaqī, *al-Sunan al-Kubrā*, vol. 9, 314 as a *mursal* from al-Zuhri.
- 81 Editor: Like the fortieth day of death and anniversaries.
- 82 Abū Dāwūd, *Sunan*, vol. 3, 344, Tr. No. 3754.
- 83 Qurʾān 76:9, 10.
- 84 The tradition is in al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 495–96, Tr. No. 3459. This is a lengthy tradition that conveys the meaning that the Jews and Christians worked for longer periods, yet the reward granted to Muslims is greater or double.
- 85 Editor: In the clarification of this ambiguity, from the beginning to the end, he has only occupied himself with personal gain and has not mentioned the primary purpose that participates in personal gain. He stated this while mentioning the ambiguity. Personal gain is not the main topic here; rather, it is the securing of interests and the repelling of harm.
- 86 Qurʾān 6:149.
- 87 Qurʾān 98:5.
- 88 Qurʾān 18:110.
- 89 This means one associating and the one whom he is associating. It is recorded by Muslim, *Ṣaḥīḥ*, Tr. No. 2985.
- 90 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 9, Tr. No. 1.
- 91 Qurʾān 39:3.
- 92 This is similar to what Jeremy Bentham has to say – that is, man has two masters, pleasure and pain, and it is these that determine his actions. Bentham constructed his “felicific calculus” on this basis.
- 93 The title of al-Ghazālī’s famous book on the revival of the religious sciences.
- 94 Editor: The Author did not say that he does not remain a worshipper by doing so, although this is the core idea in the discussion of the issue. He made a statement that is ambiguous and general, which can be interpreted to mean that his devotion is not perfect. It may also be interpreted to mean that the aspect of worship is missing or eliminated due to concern with personal benefit.
- 95 Qurʾān 37:40–43.
- 96 Qurʾān 29:6.
- 97 Editor: The statement: “But devotion devoid of temporal and other worldly benefits is very difficult, and it is not attained except by the elect”, means that it is possible. How then does he say that whoever claims this is an unbeliever? Abū Ḥāmid combines the two by saying that lack of concern by the elect is due to the intention of seeking blessings mentioned for the residents of heaven. These are like eating and drinking, clothing and enjoying the company of *ḥūrs* and so on.
- 98 Qurʾān 20:39.
- 99 Qurʾān 26:84.
- 100 It is recorded by the two Shaykhs: by al-Bukhārī in *Kitāb al-‘Ilm*, and by Muslim in *Kitāb Ṣiffat al-Qiyāmah*.
- 101 Editor: This is the subject matter of the tradition of Ibn ‘Umar. The Messenger of Allāh (pbuh) had asked a question which the Companions (pbuh) did not answer, but ‘Abd Allāh ibn ‘Umar had guessed the correct answer, however, he was young and did not say anything out of respect for the elders.
- 102 Qurʾān 2:160.
- 103 Imām Mālik’s student, God bless them both.
- 104 Qurʾān 2:198.
- 105 Qurʾān 37:99

- 106 Qurʾān 26:21.
- 107 It is recorded by Aḥmad, *Musnad*, vol. 3, 128, 199, 285.
- 108 The tradition is found in al-Bukhārī, Muslim, Abū Dāwūd, al-Tirmidhī and al-Nasāʾī.
- 109 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 280.
- 110 Qurʾān 30:21.
- 111 Qurʾān 10:67.
- 112 Qurʾān 2:22.
- 113 Qurʾān 28:73.
- 114 Qurʾān 78:10, 11.
- 115 Qurʾān 2:216.
- 116 Qurʾān 2:216.
- 117 That is, the intention of the subject is in conformity with the intention of the Lawgiver.
- 118 Editor: The illustration of *ḥajj* (pilgrimage) is not clear, because the purpose of his statement is to consider an act that vacillates between a financial liability and punishment, which is the subject of examination. *Ḥajj* is not of this type; rather, it is a matter of worship, which has a link with wealth. He should have classified required acts into three types ...
- Translator: In reality the Author did not say penalty. He said a financial liability and another act. *Ḥajj* does entail a financial burden although it is primarily an act of worship. It is similar in this respect to expiation, as the learned Author says.
- 119 Editor: The Author quotes a number of evidences after this in support. These evidences must be applied to these meanings for clarity.
- 120 Qurʾān 35:18.
- 121 Qurʾān 53:39.
- 122 Qurʾān 35:18.
- 123 Qurʾān 35:18.
- 124 Qurʾān 35:18.
- 125 Qurʾān 29:12.
- 126 Qurʾān 2:139.
- 127 Qurʾān 6:52.
- 128 Qurʾān 82:19.
- 129 Qurʾān 31:33.
- 130 Qurʾān 2:48.
- 131 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 155, Tr. No. 3527.
- 132 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 152, Tr. No. 1290, in the book of funerals.
- 133 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 704, Tr. No. 1017, in the book of *zakāt*.
- 134 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 3, 1255, Tr. No. 1631, in the book of *waṣīyyah*. It is also recorded by al-Tirmidhī, Abū Dāwūd and Aḥmad.
- 135 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 364, Tr. No. 3335, in the book of *aḥādīth al-anbiyāʾ*.
- 136 Qurʾān 50:21.
- 137 The first narration is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 66, Tr. No. 1853, while the second is recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 973, Tr. No. 1334.
- 138 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 192, Tr. No. 1952; and by Muslim, *Ṣaḥīḥ*, vol. 2, 803, Tr. No. 1147.
- 139 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 483, Tr. No. 668.
- 140 Qurʾān 9:113.
- 141 In fact he said this about his uncle Abū Ṭālib, as recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, 341, Tr. No. 4675.
- 142 Qurʾān 9:84.
- 143 Qurʾān 9:84.
- 144 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 514, Tr. No. 3477.
- 145 Editor: This issue is not under dispute here, but the Author wishes to widen the discussion.

- 146 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 1997, Tr. No. 2581.
- 147 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Tr. No. 2371; and Muslim, *Ṣaḥīḥ*, vol. 2, 680–83, Tr. No. 987. The Author provides a shorter version of this tradition here, but we have reproduced the full version quoted earlier. According to the Editor, the Author is, perhaps, providing only the meaning of the tradition.
- 148 It is reported by Mālik, Abū Dāwūd and al-Nasāʿī. A tradition in the same meaning is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 136, Tr. No. 2996.
- 149 It is recorded by Wakīʿ, *al-Zuhd* (Tr. No. 240) and through him it is reported by Ibn Mājah, *Sunan*, vol. 2, 1413, Tr. No. 4228. It is also reported by Aḥmad.
- 150 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 323, Tr. No. 6491; and by Muslim, *Ṣaḥīḥ*, vol. 1, 117, Tr. No. 131.
- 151 The tradition is recorded either in meaning or in the same words in many sources, “When two Muslims clash with drawn swords, the slayer and the slain both go to the fire.” It was said, “O Messenger of Allāh, one person is the slayer, but what is the fault of the slain?” He (pbuh) said, “He intended to slay his brother.” See, e.g., Ibn Mājah, *Sunan*, vol. 2, 1311, Tr. No. 3965.
- 152 Qurʾān 50:21.
- 153 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 192, Tr. No. 1952; and by Muslim, *Ṣaḥīḥ*, vol. 2, 803, Tr. No. 1147.
- 154 Qurʾān 53:39.
- 155 Qurʾān 53:39.
- 156 Qurʾān 4:13.
- 157 Qurʾān 4:14.
- 158 Qurʾān 56:24.
- 159 Qurʾān 16:32.
- 160 Qurʾān 16:97.
- 161 Editor: This means acts of worship whose causes recur. In the case of *zakāt*, however, the minimum scale may be available in one year but not in another year. The other acts are to be viewed in this manner.
- 162 Qurʾān 70:22, 23.
- 163 Qurʾān 73:20.
- 164 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 16, Tr. No. 1132.
- 165 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 213, Tr. No. 1969.
- 166 Ibid.
- 167 Qurʾān 57:27.
- 168 Qurʾān 2:45.
- 169 Qurʾān 2:46.
- 170 The tradition is recorded by some scholars, for example, al-Haythamī, *Majmaʿ al-Zawāʿid*, vol. 1, 67, but is considered weak.
- 171 These words are part of a tradition that begins with the words, “This religion is based on ease ...” It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 93, Tr. No. 39. The tradition is related from Abū Hurayra (God be pleased with him).
- 172 Qurʾān 34:28.
- 173 Qurʾān 7:158.
- 174 It is part of a lengthy tradition whose first words are, “I have been given five things that were not given to anyone before me ...” Within it are the words, “I have been sent to each red and black person.” It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 370–71, Tr. No. 521.
- 175 Editor: That is, the rules creating obligations are addressed to their guardians.
- 176 Editor: That is, these interests are equally applicable to them. As humankind their interests are common based on their needs and necessities.
- 177 Qurʾān 33:50.
- 178 Qurʾān 33:51.

- 179 It is recorded by al-Bukhāri, *Ṣaḥīḥ*, vol. 2, 447, Tr. No. 955.
- 180 Qurʾān 33:37.
- 181 Editor: He has already discussed that people in such things are of two types: those who ignore their own benefits in the performance of the required act and those who acquire them in a lawful manner prescribed by the *sharīʿa*. Thus, persons in the first type are not addressed the way those in the second category are addressed, and this may be treated as a case of a specific address.
- 182 This means Volume 3 of this book.
- 183 Qurʾān 4:105. The words in italics, “by that which Allāh has shown thee” are relevant here as it is this gift that has been granted to the Umma as well.
- 184 Qurʾān 4:83. The word investigators here means those who undertake *istinbāḥ* (derivation).
- 185 These are meanings that have been indicated by Ibn al-Arabī, as stated at the beginning of this issue.
- 186 Qurʾān 33:56.
- 187 Qurʾān 33:43.
- 188 Qurʾān 2:157.
- 189 Qurʾān 93:5.
- 190 Qurʾān 22:59.
- 191 Qurʾān 98:5.
- 192 Qurʾān 48:2.
- 193 Qurʾān 48:5.
- 194 Qurʾān 48:2.
- 195 Qurʾān 5:6.
- 196 Qurʾān 4:163.
- 197 The learned Editor gives arguments to show that it is difficult to rationalize this meaning and that revelation cannot be split up into such parts. He goes into details about the period before revelation in which the Prophet (pbuh) used to see true dreams. He quotes Ibn Khaldun to assert that it is difficult to investigate this meaning in terms of time. God knows best. Al-Zarkashī and Ibn Ḥajar have also attempted to explain the meaning of this tradition.
- 198 It is recorded by al-Bukhāri, *Ṣaḥīḥ*, vol. 12, 373, Tr. No. 6987. It is also recorded by Muslim, Abū Dāwūd and other sources.
- 199 Qurʾān 2:144.
- 200 Qurʾān 33:51.
- 201 Editor: The issue here is not about the number of wives permitted, but about justice between his wives.
- 202 Qurʾān 2:125.
- 203 Qurʾān 66:5.
- 204 It is recorded by al-Bukhāri, *Ṣaḥīḥ*, vol. 1, 504, Tr. No. 402.
- 205 It is recorded by Abū Dāwūd in *Sunan* as Tr. No. 2063.
- 206 Qurʾān 58:1, 2. The next two verses laid down the procedure for moving out of such an oath. The fifth verse said, “Those who oppose (the command of) Allāh and His Messenger will be humbled to dust, as were those before them: for We have already sent down clear signs. And the Unbelievers (will have) a humiliating chastisement.” [58:5]
- 207 It is recorded by al-Bukhāri, *Ṣaḥīḥ*, vol. 8, 454, Tr. No. 4750.
- 208 It is recorded by al-Bukhāri, *Ṣaḥīḥ*, vol. 8, 449, Tr. No. 4747. The words “save my back” indicate the penalty of stripes for false accusation of unlawful sexual intercourse called *qadhf*. The verses following this verse lay down the procedure of *liʿān* to be followed when a husband accuses his wife.
- 209 Qurʾān 17:79.
- 210 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 4, 626, Tr. No. 2438.
- 211 This is a tradition from al-Ghazālī’s *ihyāʾ*. It is recorded with al-Bayhaqī and al-Dārʿuqtnī with weak *isnād*.

- 212 Qurʾān 94:1.
 213 Qurʾān 39:22.
 214 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 587, Tr. No. 3616. He said it is of the *gharib* category.
 215 Qurʾān 5:54.
 216 Qurʾān 3:110.
 217 Qurʾān 2:143.
 218 Qurʾān 61:6.
 219 Qurʾān 62:2.
 220 Qurʾān 7:158.
 221 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 126, Tr. No. 1913.
 222 Qurʾān 9:43.
 223 Qurʾān 3:152.
 224 Qurʾān 94:4.
 225 It is recorded by Abū al-Faḍl al-Rāzī in *Faḍāʾil al-Qurʾān* as Tr. No. 54.
 226 Qurʾān 33:57.
 227 It is part of a tradition that has been recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 696, Tr. No. 3863.
 228 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 341, Tr. No. 6502.
 229 Qurʾān 4:80.
 230 Qurʾān 6:87.
 231 Qurʾān 22:78.
 232 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 1782, Tr. No. 2276.
 233 Qurʾān 35:32.
 234 Qurʾān 27:59.
 235 Qurʾān 6:54.
 236 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 134, Tr. No. 3820.
 237 Qurʾān 17:74.
 238 Qurʾān 14:27.
 239 Qurʾān 68:3.
 240 Qurʾān 95:6.
 241 Qurʾān 75:17–19.
 242 Qurʾān 54:17.
 243 Qurʾān 4:59.
 244 It is part of the following tradition.
 245 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 111, Tr. No. 7137.
 246 Qurʾān 20:1, 2.
 247 Qurʾān 7:2.
 248 Qurʾān 52:48.
 249 Qurʾān 5:6.
 250 Qurʾān 2:185.
 251 Qurʾān 4:28.
 252 Qurʾān 4:28.
 253 It is recorded by Ibn Māja, *Sunan*, vol. 2, 1303, Tr. No. 3950.
 254 It is recorded by al-Ṭabarānī, *al-Kabīr*, vol. 11, 223, Tr. No. 11560.
 255 Qurʾān 38:2, 83.
 256 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 11, 243, Tr. No. 6426.
 257 It is part of a tradition that is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 156–57, Tr. No. 172.
 258 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 491, Tr. No. 3449.
 259 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 339, Tr. No. 3294.
 260 It is recorded by Muslim, *Ṣaḥīḥ* in the section on the “Merits of ‘Uthmān.” It is recorded by Aḥmad in *al-Musnad*, vol. 1, 71; vol 6, 62.

- 261 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 124, Tr. No. 3805.
- 262 Qurʾān 38:35.
- 263 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 333, Tr. No. 846. Zayd ibn Khālid al-Juhani relates: “The Prophet led us in the morning prayer at Hudaybiyya after a rainy night. On completion of the prayer, he faced the people and said, ‘Do you know what your Lord has said (revealed)?’ The people replied, ‘Allāh and His Apostle know better.’ He said, ‘Allāh has said, “In this morning some of my slaves remained as true believers and some became non-believers; whoever said that the rain was due to the blessings and the mercy of Allāh had belief in Me and he disbelieves in the stars, and whoever said that it rained because of a particular star had no belief in Me but believes in that star.”’”
- 264 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 29, Tr. No. 1145 (prayer during the night).
- 265 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 33, Tr. No. 55 (middle prayer).
- 266 Editor: This means that he (pbuh) acting on the basis of his assessment, dreams and inspiration gave good news to some, warned others and so on.
- 267 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 40, Tr. No. 1157.
- 268 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 90, Tr. No. 3740, 3741.
- 269 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 3, 1457, Tr. No. 1826.
- 270 It is recorded by al-Ṭabarānī, in *al-Muʿjam al-Kabir*, vol. 8, 260, Tr. No. 7873.
- 271 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 228, Tr. No. 1982.
- 272 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 70, Tr. No. 3701.
- 273 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 269, Tr. No. 3631.
- 274 Some consider this tradition to be weak. It is found in Aḥmad, *Musnad*, vol. 4, 101.
- 275 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 541, Tr. No. 447.
- 276 The Author refers to what is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 378.
- 277 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 7, 117, Tr. No. 3792.
- 278 This pertains to the *uṣūl al-dīn* or the principles pertaining to the tenets of faith and other theological matters.
- 279 This is Ibn Rushd the grandfather and not Averroës (the grandson).
- 280 That is, even if the result of applying the legal rule on the basis of the *sharīʿa* and on the basis of the illumination or such source is the same.
- 281 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 288, Tr. No. 2680.
- 282 This version is from Abū Dāwūd, *Sunan*, vol. 4, 174, Tr. No. 4512. It is also recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 10, 244, Tr. No. 5777.
- 283 This is only possible if he arose for a short while and died again after conveying the information.
- 284 This could mean that he is talking about the “dying declaration”, which is valid even in modern law.
- 285 It is reported by Aḥmad in *al-Musnad*, vol. 4, 193–95.
- 286 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 546, Tr. No. 3518.
- 287 It is recorded by al-Bayhaqī in *al-Sunan al-Kubrā*, vol. 10, 252. It is also recorded by al-Bukhārī.
- 288 It is recorded by Abū Dāwūd, *Sunan*, vol. 3, 308, Tr. No. 3607.
- 289 Editor: Perhaps the words here should have been “the biggest liar.”
- 290 *Liʿān* consists of oaths taken by the husband and wife when the husband has accused her of being unfaithful or he denies the paternity of the child she bears. If the wife takes the oaths too, all liability is removed and the accusation fails.
- 291 It is part of a tradition recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 8, 449, Tr. No. 4747.
- 292 Ibid.
- 293 This would be a fresh accusation by someone other than the husband, because the procedure between husband and wife is settled through the oaths of *liʿān*. If the husband had evidence, for witnesses in this case, he should have brought it in the first place.

- 294 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 514, Tr. No. 418.
- 295 Editor: Because in the first method the benefit though which success to be attained was not kept in view; rather, it was merely a focus on what was permissible.
- 296 It is reported by Ibn Iṣḥāq as it is in *Sīra Ibn Hishām*, vol. 1, 192.
- 297 Qurʾān 66:7.
- 298 Qurʾān 10:52.
- 299 It is part of a tradition (*Qudsi*) that is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 1994, Tr. No. 2577.
- 300 The word used in the text is *shukr* (thanks).
- 301 Qurʾān 37:102.
- 302 In these last few lines he answers the first sentence of his book in which he stated that *uṣūl al-fiqh* are definitive.
- 303 This is an important section for understanding the exact scope of the *shariʿa* and the meaning of customary law (*ʿurf*). Those who advocate the use of customary law as an important source should read this section carefully.
- 304 Qurʾān 2:179.
- 305 Qurʾān 2:179.
- 306 Qurʾān 2:187.
- 307 Qurʾān 62:10.
- 308 Qurʾān 2:198.
- 309 This example has preceded earlier.
- 310 Editor: The word *khadim* is used, which does not occur in the dictionary. Perhaps, it is a colloquial term.
- 311 A few paragraphs later, the Author refers to this person as a student.
- 312 We have referred to this person as the servant in what has preceded a few paragraphs above.
- 313 Qurʾān 9:119.
- 314 Qurʾān 65:3.
- 315 Qurʾān 11:55, 56.
- 316 Qurʾān 16:91.
- 317 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 781, Tr. No. 1110.
- 318 See, for example, al-Tirmidhī, *al-Jāmiʿ*, vol. 5, 569, Tr. No. 3578.
- 319 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 5, 312, Tr. No. 2713.
- 320 Editor: The spelling found in the text is perhaps incorrect.
- 321 Qurʾān 5:67.
- 322 It is recorded by Ibn Ḥibbān, *Ṣaḥīḥ*, vol. 2, 510, Tr. No. 731.
- 323 Editor: In the fourteenth issue he had said that practices and habits about which the *shariʿa* had given a ruling do not change. A reconciliation between the two is required. Translator: We feel that under that issue the discussion was about the legal rules that do not change, and not the actual acts.
- 324 Editor: This is in the case of ritual impurity (*ḥadath*) and not actual impurity affecting the body, clothing and location where it is confined to the area affected. Translator: We should focus on the Author's idea. He is saying that in the case of *istinjā* (washing of the two passages), for example, we are required to perform full ritual ablution when our face, hands and feet are not affected by the impurity. Thus, purification extends beyond the actual location of impurity.
- 325 That is, ritual obedience without probing for underlying causes.
- 326 The words are in al-Tirmidhī, *al-Kāmiʿ*, vol. 2, 240–41, Tr. No. 395; Abū Dāwūd, *Sunan*, vol. 1, 273, Tr. no. 1039. It shows that the reason for prostration here is error.
- 327 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 234, Tr. No. 135.
- 328 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 61, Tr. No. 588.
- 329 Qurʾān 17:15.
- 330 Qurʾān 4:165.

- 331 Editor: This is done as an exemption in the case of *ʿarāya*.
- 332 Qurʾān 2:179.
- 333 Qurʾān 2:188.
- 334 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 136, Tr. No. 7158.
- 335 It is reported through different channels. The report from ʿUbāda ibn al-Ṣāmit is in Ibn Māja, *Sunan*, vol. 2, 784, Tr. No. 2340.
- 336 It is recorded by al-Nasāʾī, *al-Kubrā*, vol. 6, 220.
- 337 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 4, 1153, Tr. No. 1513.
- 338 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 3, 1587, Tr. No. 2002.
- 339 Qurʾān 5:91.
- 340 Said to be a group of Khawārij.
- 341 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 265, Tr. No. 335.
- 342 Demand and option here pertain to the definition of the *ḥukm sharʿī*, and it is out of the demand that the categories of obligatory, recommended, prohibited, and disapproved flow. The category of permissible flows from the choice or option.
- 343 Here he appears to be referring to the Muʿtazila.
- 344 The Author is talking about the modes of the discovery of the *ʿilla* called *masālik al-ʿilla*.
- 345 There are different views on this, and the jurists argue on the basis of examples. For example, a text requires that selling is to be given up at the time of the Friday congregation prayer. If, however, a sale is concluded at this time, is such sale void? There are different views on this.
- 346 It part of a tradition recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 58–59, Tr. No. 30.
- 347 The *mudabbar* slave is one who has been emancipated through a bequest – that is, he will attain freedom upon the death of the master. According to the Ḥanafis, all bequests are reversible except one made with respect to a *mudabbar* slave. In this case, after having made such a bequest the master sells the slave. This is not legal, or at least is morally incorrect. Mālik, according to the Author, permits such a sale provided the buyer emancipates the slave as part of the sale. This should explain the complex reasoning of the Author on the point.
- 348 Repetition of his statement made three paragraphs earlier.
- 349 Apparently, the reference is to the following verses of the Qurʾān: “Allāh is the creator of all things, and He is the guardian and disposer of all affairs. To Him belong the keys of the heavens and the earth: and those who reject the signs of Allāh – it is they who will be in loss. Say: ‘Is it some one other than Allāh that ye order me to worship, O ye ignorant ones?’ But it has already been revealed to thee – as it was to those before thee – ‘If thou wert to join (gods with Allāh), truly fruitless will be thy work (in life), and thou wilt surely be among the losers.’ Nay, but worship Allāh, and be of those who give thanks. No just estimate have they made of Allāh, such as is due to Him: on the Day of Judgment the whole of the earth will be but His handful, and the heavens will be rolled up in His right hand: Glory to Him! High is He above the partners they attribute to Him!” Qurʾān 39:62–67.
- 350 Qurʾān 16:78.
- 351 Qurʾān 67:23.
- 352 Qurʾān 2:152.
- 353 Qurʾān 16:114.
- 354 Qurʾān 14:7.
- 355 It part of a tradition recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 58–59, Tr. No. 30.
- 356 Qurʾān 7:32.
- 357 Qurʾān 5:87.
- 358 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 9, 104, Tr. No. 5063.
- 359 Qurʾān 5:103.
- 360 Qurʾān 6:138.
- 361 Qurʾān 7:32.

PART II
THE PURPOSES OF THE SUBJECT



THE INTENTION OF THE SUBJECT IN MEETING OBLIGATIONS

The second part of the book pertains to the purposes of the subject with respect to obligation. There are several issues in it.

The First Issue: Acts Are Determined by Intentions

Acts are determined by intentions and the purposes are taken into account in transactions, whether these fall under worship or human practices.

It is sufficient for you to know that purposes differentiate between what is practice and what is termed worship. Within worship, they distinguish between what is obligatory and what is not obligatory. In human practices, they distinguish between obligatory, recommended, permissible, disapproved of, prohibited, valid and void, along with other categories of the rules. A single act may have as its purpose a certain thing and it will amount to worship, but a different thing may be intended and it will no longer be worship; in fact, one thing may be intended and it will amount to faith, but another thing may be intended and it will turn into disbelief, like prostrations before Allāh and before idols.

Further, when a purpose is associated with an act, it leads to the association of obligatory rules with it. If it is devoid of intention, nothing will be associated with it, like the act of one asleep, oblivious or insane.

Allāh has said, “And they have been commanded no more than this: to worship Allāh, offering Him sincere devotion, being true (in faith); to establish regular prayer; and to give *zakāt*; and that is the Religion right and straight”,¹ “So serve Allāh, offering Him sincere devotion”,² “Except under compulsion, his heart remaining firm in faith”,³ “That they come to prayer save lazily; and that they offer contributions unwillingly”,⁴ “But do not take them back to injure them (or) to take undue advantage”,⁵ after the words, “Either take them back on equitable terms or set them free on equitable terms”,⁶ “After payment of legacies and debts; so that no loss is caused (to any one)” and “Let not the believers take for friends or helpers unbelievers rather than believers: if any do that, in nothing will there be help from Allāh, except by way of precaution, that ye may guard yourselves from them.”⁷ A tradition says, “Acts are determined by intentions, and for each person are what he intends.”⁸ The Prophet (pbuh) said, “One who participates in battle, so that the word of Allāh have sway, is on the path of Allāh.”⁹ A

tradition says, “I am the wealthiest of partners in associating partners, so whoever does something in which he associates a partner with me, I relinquish my share for the partner.”¹⁰ This is verified by the words of the Exalted, “Whoever expects to meet his Lord, let him work righteousness, and, in the worship of his Lord, admit no one as partner.”¹¹ The Prophet (pbuh) permitted for one in a state of *iḥrām* the consumption of the meat of animals hunted (during pilgrimage), as long he had not hunted it himself or it had not been hunted for him.¹² All this is self evident and not in need of further elaboration.

It is not to be said: The purposes, even though they have been acknowledged as a whole, have not been acknowledged in an unqualified sense under all circumstances. The evidence for this is of several types:

First: in acts for which coercion is permitted under the *shari‘a*, the apparent demeanour of the person coerced conveys that he does not intend obedience to the Lawgiver for the act for which he has been coerced, because coercion is only due to this reason. If he undertakes the act then he intends the repelling of torment from his person, but he does not intend the act commanded. The assumption is that an act is not valid except through intention (*niyya*), which is legally stipulated for the act, and he has not intended the act; therefore, it necessarily follows that the act is not valid. If it has not been intended then its existence and non-existence are the same, thus, it follows that he should be asked to perform the act a second time. The second leads to what the first led to and so on, or that the coercion is futile, but both situations are not possible. The other option will be that the act be deemed valid without intention, and this is what is required.

Second: acts are of two types – human transactions; and acts of worship. In the case of human transactions, the jurists have stated that in order to bring about obedience they are not dependent upon intention, rather their mere occurrence is sufficient, as in the case of the return of deposits and usurped articles, maintenance of wives and family as well as other such things. How then can an absolute statement be made that the purposes of the *shari‘a* are acknowledged in transactions? As for the acts of worship, intention is not stipulated for all of them in an absolute sense. In fact, there are detailed discussions and disagreement of those with knowledge about many of their forms. A group of jurists have upheld the non-stipulation of intention in ablution, and so also in fasting and *zakāt* for these are acts of worship. They made statements uttered in jest binding in the case of emancipation of slaves and vows, just as they made them binding in the case of marriage, divorce and retraction of divorce.¹³ A tradition says, “There are three things that when done seriously or in jest are treated seriously: marriage, divorce and retraction.”¹⁴ There is another tradition which says, “One who marries in jest, or who divorces or emancipates in jest, has made valid transactions.”¹⁵ It is related from ‘Umar ibn al-Khaṭṭāb (God be pleased with him), “There

are four valid things when they are uttered: divorce, emancipation, marriage and vow.”¹⁶ It is well known that a person who is joking has no intention that the thing he is joking about should occur. In Mālik’s school, if a person refuses to formulate an intention during the fast his fast is valid, and whoever offers the salutation after two *rakʿas* of the *zuhr* prayer, for example, under the impression that this is the complete prayer, and then offers two supererogatory *rakʿas*, but then recalls that he did not offer the complete prayer, is deemed compensated by substituting two supererogatory *rakʿas* for the obligatory ones missed. The basis for the issue of refusal is something disputed by the jurists. In all this, the validity of acts of worship without the formulation of an intention is a reality.

Third: there are acts in which the intention of obedience cannot be rationally conceived. This is the first contemplation that leads to the knowledge about the existence of the Creator, and it is knowledge without which faith is not possible. Intending obedience in this is impossible, as has been determined by the scholars. How then can it be said that no act is valid without an intention? When all this is established, it indicates the negation of the claim, and now it is stated that not every act is dependent upon intention, and it is not every transaction in which the purposes are taken into account in such an unqualified sense.

The reason is that we will respond by stating two facts:

First: we say that the purposes related to the acts are of two types:

First type: What amounts to a necessity for each person with a free will with reference to his will: It will be correct to say here that each act that is acknowledged with the accompanying intention, is intended initially as obedience to the command of the Lawgiver, and it is then that the obligation-creating rules are related to it. This is indicated by the evidences that have already preceded. Each rational actor in possession of his will intends to bring about the act with some purpose in mind, whether this is good or bad, and whether it is an act whose commission or relinquishment is required or it is not demanded at all by the *shariʿa*. If we assume an act without an accompanying will, like that of the person asleep or one insane or the like, then these persons are not subject to the law, and the requirements of the preceding evidences are not related to their acts. This category is not intended by the Lawgiver. What remains is one acting on the basis of his will for which an intention is necessary, because it is then that the rules are related to him. No act is, therefore, excluded from the universal rule. What has been stated in the question does not go beyond these two types. The reason is that it is either intended to remove the requirement of coercion, jest or the requirement of evidence and so on, in which case it will fit into the legal rule due to its acknowledgement or absence, or it will not be intended, in which case no legal rule will be related to it at all. If a rule is at all related to the latter it belongs to the category of the declaratory rules and not the obligation-creating rules.

Thus, one who abstains from things that break one's fast, due to sleep or fainting, if we validate his fast, it will be from the perspective of the declaratory communication. It will be as if the Lawgiver deems the abstention itself as the waiving of delayed performance or as the basis for the validity of the fast, and not from the perspective that the person is an addressee for purposes of obligation. The same applies to acts of a similar nature.

Second type: What is not a necessity for each act (rather, it is a necessity for matters of ritual obedience): all acts are subsumed under will and do not become matters of ritual obedience except when intended to be such. There is no ambiguity about acts that have been laid down for ritual obedience such as prayer, pilgrimage and others. As for transactions, they cannot be acts of ritual obedience except through such an intention. No act falls out of these except the "first contemplation" due to the absence of its possibility, but it actually refers to the fact that the intention of the subject is not directed towards it as ritual obedience; therefore, a legal rule is not related to it at all, based on the denial of obligation that is impossible to perform. As for the relationship of the obligation to the act itself,¹⁷ there is no ambiguity about its validity, because the subject is able to do so and attain the knowledge, as distinguished from the intention of ritual obedience in the act as that is impossible. It comes to be reckoned among things for which there is no ability. Accordingly, it is not included in the evidences demanding an intention or legally acknowledging it.

Second: the response to the statements objecting on the basis of details.

As for coercion to perform the obligation, it is stated that in those acts that are not in need of the intention of ritual obedience and the objective of obedience to the command, worship is not valid, except that the benefit has been attained and the legal demand stands extinguished. It is like the taking away of property from the possession of the usurpers. The acts among these that are in need of an intention of ritual obedience are not rewarded when performed with respect to the coerced person, especially with respect to his own person, if he does not form an intention of nearness to Allāh, as in the case of being coerced to perform prayer. The demand, however, is extinguished for purposes of the apparent application of the rule; therefore, the judge cannot ask him to repeat the act. The reason is that internal matters are not known to the servants, and they are not subjected to a demand about ripping open the hearts to peer into them.

The acts pertaining to human practices – even though there is no need or intention to move out of their imposed liability – do not amount to acts of worship or are even acknowledged for purposes of spiritual reward except through an intention to act in obedience, otherwise they become a nullity.¹⁸ The elaboration of this meaning of nullity (*buṭlān*) is in the *Book of Aḥkām*. What has been mentioned about acts of ritual obedience, by one who states that there is no stipulation of intention in them, is based on the assumption that they are like human practices and have an underlying rational meaning, and

intention is stipulated for acts that cannot be rationalized. Thus, purification and *zakāt* are in this category. As for fasting, it is based on the rule that abstaining from eating has been determined by time that is not meant for another act, nor can intention be directed to another act in this case. There are parallels for this in human practices. For example, in the case of the *shighār* marriage,¹⁹ Abū Ḥanīfa is of the view that it is validly concluded even if they had not²⁰ intended it to be so.²¹

As for vows and emancipation, and what was stated about them, it has already preceded that one intending the occurrence of the cause is not deemed to intend the consequences; therefore, not intending the occurrence is of no benefit to him. The jester is similar, because he has intended the occurrence of the cause without doubt, and he has either not intended the consequences positively or negatively, or he intends that the consequences should not occur. On each count he is bound by the consequences, whether he accepts them or rejects them. When we say it is non-binding, we mean he has expressed the words, but does not intend the meaning, and mere jest only gives rise to the rule of jest, which is permissibility or something similar. The underlying reasoning provided in these issues is that seriousness and joking are internal matters, and the statement is to be construed as seriousness and it accompanies the intention of the occurrence of the object. In the alternative, it may be said that he intends the contract, which is legal seriousness, in jest. He therefore negates the purpose of the Lawgiver for which reason rule of jest is nullified and converted to one of seriousness.

The issue of refusing the formulation of intention of fasting is based on the reasoning that the fast has been commenced in a valid way. Thus, the earlier intention is already accompanying it legally until breaking of the fast is true, and this is not found; therefore, the fast is valid. Similar to this is the substitution of two supererogatory *rakʿas* for the obligatory *rakʿas* missed. The reason is that the assumption of completion was not terminated according to one who validates this on the basis of the first intention. Accordingly, the salutation and transference to another intention in between are deemed redundant and are not compatible with the object. The issue of rejection takes the same form as well.

As for the “first contemplation”, it is impossible to conceive the intention of ritual obedience, and the response has preceded in the first point above. All success lies with Allāh.

The Second Issue: Intention Conforming to the Intention of the Lawgiver

The intention of the Lawgiver with respect to the subject is that his intention in acts undertaken conform with the intention of the Lawgiver in legislation. The evidence for this is manifest in the laying down of the *shariʿa*. It has already preceded that the *shariʿa* has been laid down for the securing of the interests

of the servants in the absolute and general sense. The subject is required to operate accordingly in his acts, and that he should not intend opposition to the intention of the Lawgiver. The reason is that the subject has been created for worshipping Allāh, and this refers to the undertaking of acts in conformity with the intention of laying down the *shariʿa*. This is the fruit of worship and through it he will attain recompense in this world and the next. Further, it has already been said that the intention of the Lawgiver is to protect the necessities along with the related needs and complementary values, and this is the core of the obligation imposed on the subject. It is, therefore, necessary that he be required to formulate such an intention otherwise he will not be acting towards the intended protection, because all acts are dependent upon intentions. The reality underlying all this is that he is the vicegerent of Allāh in the securing of these interests to the extent of his power, ability and resources. The lowest level of this vicegerency means authority over his own self, followed by that over his family, and thereafter over all that pertains to his interest. It is for this reason that the Prophet (pbuh) said, “Each one of you is a shepherd and each is responsible for his herd.”²² The Noble Qurʾān says, “Believe in Allāh and His messenger, and spend (in charity) out of the (substance) whereof He has made you heirs.”²³ This refers to the words of the Exalted, “Behold, thy Lord said to the angels: ‘I will create a vicegerent on earth’”,²⁴ “He said: ‘It may be that your Lord will destroy your enemy and make you inheritors in the earth; that so He may see how you act’”²⁵ and “It is He who hath made you the inheritors of the earth: He hath raised you in ranks, some above others: that He may try you in the gifts He hath given you.”²⁶ The vicegerency is general as well as special in accordance with the elaboration provided in the tradition, “The ruler is a shepherd, each man is a shepherd over the members of his household, a woman is a shepherdess over her husband’s house and his children. Thus, each one is a shepherd and each is responsible for his herd.”²⁷ He gave examples elaborating that the rule is universal and general, not particular, and each individual out of the individuals with some authority is included in it, for general or special vicegerency. If this is the case, then it is required of him to assume the function of One whose vicegerent he is, following His laws and His purposes in his operations. This is evident.

Sub-Issue: Intentions and Causes

After having ascertained the details of the purposes of *shariʿa* with respect to the subject, we find that they refer back to what was stated in the *Book of Ahkām* on the issue of the subject bringing about the causes. In that text, five forms of formulating a compatible or incompatible intention were stated. The reader, at this point, should refer to that discussion so that what is intended will become apparent, God willing.

The Third Issue: Going against the Intention of the Lawgiver and against *Shari‘a*

Every person who seeks out, in the obligations imposed by the *shari‘a*, something other than what has been prescribed therein has refuted the *shari‘a*, and the act of each person, who refutes it through such act, is void. Whoever desires in the obligations what has not been legislated commits an act that is a nullity.

As for the refuting act being null and void, it is obvious. The laws have been prescribed for the attainment of interests and the repelling of injuries. Thus, if they are opposed in such acts then neither the interests are secured nor injuries are repelled through the refuting acts.

As for one desiring in the *shari‘a* what has not been laid down, he is refuting it as well. The evidence for this is provided from different perspectives:

First: acts and omissions are rationally equivalent with respect to what is intended through them, because rationally there is no good (*taḥsin*) and no evil (*taqbiḥ*). Thereafter, the Lawgiver determines one of the two equivalent things to be an interest, and He determines the other to be an injury. It is He who elaborates the aspect through which there is the securing of an interest, so He commands it or permits it and He elaborates the aspect through which an injury occurs, so He prohibits it as a mercy for the servants. If the subject intends exactly what the Lawgiver has intended with respect to permission, then he has intended the aspect of interest in its most complete form, and its attainment by him is well deserved. If he intends something other than what the Lawgiver intended – and this usually happens when he is under the impression that his interest lies in what he has intended, because a rational person does not voluntarily intend an injury – he abandons the acknowledgement of what the Lawgiver intended and acknowledges what the Lawgiver abandoned. This runs contrary to the meaning of the apparent *shari‘a*.

Second: the conclusion about such an intention is that something that the Lawgiver has considered good is not considered good by this person. What the Lawgiver does not consider to be good is deemed good by this person. This too runs counter to the *shari‘a*.

Third: Allāh, the Exalted, says, “If anyone contends with the Messenger even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of Faith, We shall leave him in the path he has chosen, and land him in hell – what an evil refuge!”²⁸ ‘Umar ibn ‘Abd al-‘Azīz said, “The Messenger of Allāh (pbuh) and those in authority after him laid down precedents whose adoption is the affirmation of the Book of Allāh, the seeking of perfection in obedience of Allāh, and being strengthened in the religion of Allāh. Anyone who acts on them is guided, while one who seeks help through them is helped, but one who opposes them has followed a course other than that of the believers; he is abandoned by Allāh in this path, and He will send him to the depths of hell – an evil refuge.”²⁹ Adoption of something other than what the Lawgiver has meant

to be adopted deeming the acquisition of interest and the repelling of injury is a gross and flagrant opposition.

Fourth: the adoption of the lawful with an intention that the Lawgiver has not intended amounts to the adoption of the unlawful in reality. The reason is that the Lawgiver has legislated it due to a matter that is presumed to be known, thus, if a person adopts it with an intention different from what is known about the matter, then this person has not brought about this lawful thing at all. If he does not bring it about in this way, then he has refuted the command of the Lawgiver through such adoption. Consequently, he has come to act upon something that the Lawgiver has not commanded and he has omitted what the Lawgiver commanded.

Fifth: the subject has been placed under an obligation to act in conformity with the intention of the Lawgiver as reflected in His commands and prohibitions. If a person forms an intention that is different from this, then he is intending what he wants and seeking what he is after, not what is the purpose of the Lawgiver. If he has not formed an intention conforming to the intention of the Lawgiver then that is what is intended; rather he has formed an intention in terms of what he deems to be the means to his end through his act or omission. In this way, he considers what has been intended by the Lawgiver to be a mere means for his end. Anything that is of this nature amounts to the refutation of what has been settled by the Lawgiver and the demolition of the basis He has determined.

Sixth: this type of intention is like playing around with the signs (*āyāt*) of Allāh, because in these verses (signs) are the laws that He has legislated. After mentioning the laws that He has legislated, He said, “Do not treat Allāh’s Signs as a jest, but solemnly rehearse Allāh’s favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allāh, and know that Allāh is well acquainted with all things.”³⁰ The meaning here is that they should not be intended to mean things other than what He has legislated them for. It is for this reason that it was said to the hypocrites, who intended by the declaration of Islam something other than what the Lawgiver had intended, “Do you mock Allāh, His signs, and His Prophets?” Mocking what has been laid down in all seriousness amounts to contradicting the apparent wisdom. The evidences conveying this meaning are numerous.

There are many illustrations for the issue. These are like: raising the banner of monotheism with the intention of protecting life and property, not for acknowledging the existence of the One, the Truth; prayer with the intention of appearing pious in human eyes; slaughtering for other than Allāh; migrating for attaining the wealth of the world or for a woman to be married; *jihād* for the sake of tribal solidarity or for being remembered with honour; granting of loans for deriving benefit; making a bequest to injure heirs; marrying a woman to make her lawful for the divorcer and whatever resembles this.

This absolute³¹ meaning is objected to for certain things. Among these is what has preceded in the previous issue, like the marriage and divorce of one intending jest along with what was said about it. The person joking had intended something different from what the Lawgiver intends by the use of the words marriage and divorce, as well as other words. The response has already been provided earlier. Among these is also the person coerced to commit the unlawful. According to the Ḥanafis his transactions take legal effect in things that do not accept revocation through *iqālah* (friendly sale), and are just like acts that have been undertaken voluntarily, like marriage, divorce, manumission, oath and vow of consecration.³² Things that accept a friendly resale also take place in the same way, but are suspended subject to ratification of the coerced person based on his consent. There are other legal issues of this nature. Among these are also *ḥiyal* (legal fictions) for the removal of the obligation of *zakāt*, making the thrice-divorced woman lawful for the divorcer, along with many other transactions in which the intention goes against what has been intended by the Lawgiver, and yet according to those who uphold them they are valid. Anyone who follows up the rules of the *shariʿa* will discover numerous rules of this type, with all of them indicating that a lawful act undertaken with an intention other than what the Lawgiver has intended does not necessarily become a nullity.

The response is: The issues of coercion have been deemed to have been validly concluded on the ground that this is the intention of the Lawgiver. This is based on evidences that the Ḥanafis have adduced. It would not be proper if someone were to consider an act to be one that is not intended by the Lawgiver and then deem it valid. The reason is that it is to be declared valid on the basis of legal evidences, and legal evidences better convey the intention of the Lawgiver as compared to other things. How then can they say that an act is valid according to the *shariʿa* and that it is lawful? Is this not the essence of impossibility? The same applies to the upholding of legal fictions (*ḥiyal*) according to those who declare them to be absolutely valid.³³ They have upheld them as valid based on the assumption that the Lawgiver has an intention with respect to the acquisition of benefits and repelling of injuries; in fact, the *shariʿa* has been laid down for this purpose. Thus, if the marriage of *ḥalāla*³⁴ is valid; it is declared valid on the assumption that the interest of the spouses has come to dominate the mind and the Lawgiver grants permission for the seeking of such interest. The same applies to the remaining issues. This reasoning is based on the validity of expressing disbelief under the fear of death or torment, as well as on the recognition of this in general and particular interests. It is not possible to come up with an evidence from the *shariʿa* on the nullity of each legal fiction, just as it is not possible to come up with an evidence for validating each legal fiction. Those that specifically contradict the intention of the Lawgiver are deemed invalid, and this is something on which all the jurists of Islam agree. A disagreement prevails in cases where the

evidences appear to conflict. For this discussion, there is an occasion in this part where it will be taken up, God willing.

The Fourth Issue: Compatible and Incompatible Intentions and Acts

When a person commits an act or omission, his act or omission may either conform to the *shari'a* or oppose it. In both cases, the intention of the actor may either conform to the intention of the Lawgiver or it may oppose it. In all, these come to four kinds:

First: his act may conform to the *shari'a* and his intention too may be the same as the intention of the Lawgiver, as in prayer, *zakāt*, pilgrimage and so on. In these, he intends obedience to the command of Allāh, the Exalted, as well as the performance of what is obligatory or recommended for him. In the same manner acts like unlawful sexual intercourse, drinking of wine and all the other rejected acts are viewed, and he intends obedience in (avoiding) these. There is no ambiguity about the validity of such acts.

Second: these are cases in which his act is in opposition to the *shari'a* and he intends opposition too, like the relinquishing of obligations and the commission of prohibited acts when he intends such acts. This too is clear with respect to the rule.

Third: this is the case where the act or omission is in accordance with the *shari'a*, while the intention is opposed to the intention of the Lawgiver. This is of two types: first, where the actor is not aware that the act or omission corresponds with the *shari'a*; and second, where he is aware of this.

First type: the first is like the person cohabiting with his wife under the impression that it is another woman not married to him; the person consuming a laxative under the impression that it is wine; and the person relinquishing his prayer and believing that he remains liable for it, but he has performed it and stands absolved of liability for it at the same time. In this type, the intention to disobey through opposition stands attained. The experts of *uṣūl* narrate an agreement about sin in this under the issue of “one who delays his prayer under the apprehension of death prior to the commission of the act.” It is also concluded that the injury arising from the prohibition is not attained because he has been prohibited from this due to the harm that will arise from it. When this is not found, he cannot be like one who commits the act leading to injury. Thus, the person drinking the laxative has not lost his senses; the person cohabiting with his wife has not mingled his sperm in the case of the child to be born, nor is any blame associated with the woman due to such cohabitation; and the person relinquishing his prayer (in his mind) has not actually lost the interest secured by prayer. The same applies to all the issues falling under this rule. The conclusion then is that this act contains both compliance and non-compliance.

Suppose it is said: Has the act has occurred in conformity with the *shariʿa*? If it has conformed, then it is an act that is permitted; and if it is permitted, no sin accrues to him, but he is disobedient by agreement. This amounts to a discrepancy. If it has not conformed then it is not permitted, and there is no significance of the act having occurred in conformity in reality. If it is not permitted, it is necessary that it have the legal effects that would follow if it had been undertaken in opposition in reality. Thus, *ḥadd* becomes obligatory for the one cohabiting, punishment for the one drinking the laxative, and so on, but this is not obligatory either by agreement. This amounts to a discrepancy.

The response is that the act has acquired parts from the first two types, for it was in opposition with respect to the intention, but was complying in the act itself. When we examine the commission of the act or its omission, we find that no injury has occurred nor has an interest been lost. When we examine his intention we find it to have violated the sanctity of the command and prohibition; therefore, he has sinned through intention taken alone, while he has not sinned through the act considered alone. The legal conclusion is that he has sinned with respect to the right of Allāh, but has not sinned with respect to the right of the human being,³⁵ like a usurper who thinks that the property belongs to another person, but in reality it is his own property. There is, therefore, no demand from the person whose property he thought he had usurped, but a demand exists from the perspective of violating the sanctity of the command and prohibition. The rule is that each obligation is composed of the right of Allāh and the right of the servant.

It is not to be said: If the termination of the injury or non-termination of interest has eliminated the demand, then this is so for the person who actually drinks wine without losing his senses, or commits unlawful sexual intercourse yet he does not produce an offspring due to ejaculation outside the vagina or other reason. The reason is that the expected consequences do not come into existence. It is, therefore, a must that *ḥadd* not be the legal effect, and he is not a sinner from the perspective of his intention alone.

The reason is that we will say: This is not correct. The reason is that the actor moves to bring about the cause from which the injury arises or an interest is lost, this is drinking of wine, prohibited penetration, and these are both prohibited legal causes³⁶ of mixing of sperm and the loss of reason. The Lawgiver has not associated *ḥadd* with the loss of reason or the mixing up of lineage; rather, it is linked with the bringing about of specific causes. Further, the consequences are not acts of the one bringing about the cause; consequences are the acts of Allāh, the Exalted. He is the one who creates the child from sperm, intoxication due to drinking, like satisfaction from eating, irrigation through water, burning from fire, as has been explained on its proper occasion. If this is the case, then the one cohabiting and the one drinking have brought about the cause completely, and this necessarily leads to its consequence, which is *ḥadd*. Likewise, all other acts that run the same

course, in which the cause has been brought about but they fail to produce the consequences. As for sin, it is in accordance with this. Is this actor equal in sin to one whose act brings about the consequence? This is a different inquiry, for which there is no need here.

Second type: In this type, the act or omission is in conformity with the *shari'a* and he knows that it is so, but his intention is opposed to the intention of the Lawgiver. The illustration is of prayer through which he wishes to be seen as praying so as to acquire some worldly benefit or to be held in esteem by the people, or to evade the suspicion of murder or something else from him. This type is more severe as compared to the one prior to it. The conclusion is that this actor is treating what the *shari'a* has deemed objectives as means to other ends that the Lawgiver has not deemed to be such objectives. These acts are to be classified under hypocrisy, eye service, legal fictions inserted into the laws of Allāh, the Exalted, and all this is a nullity. The reason is that the intention is opposed to the intention of the Lawgiver at its core; therefore, it is not valid as a whole. Allāh, the Exalted, has said, "The hypocrites will be in the lowest depths of the fire: no helper wilt thou find for them; except for those who repent, mend (their lives) hold fast to Allāh, and make their religious devotion sincere to Allāh."³⁷ This has already been explained.³⁸

Fourth: this is the case when the act or omission are in opposition to the *shari'a*, but the intention conforms to the intention of the Lawgiver. This is also of two types: the first is where the opposition is known to him; and the second is where he is unaware of the opposition.

First type: when it is with knowledge about the opposition, it amounts to innovation, like the creation of new forms of worship and making additions over what has already been legislated. It is usual that no one dares to innovate in this way, except on the basis of some kind of interpretation. Even when it is done in this way, it is blameworthy as has been laid down in the Qur'ān and the *Sunna*. The topic does not need repetition here, but something more statements will be made about it later, God willing. What is derived here is that all innovations are blameworthy, due to the generality of the evidences about this, like the words of the Exalted, "As for those who divide their religion and break up into sects, thou hast no part in them in the least: their affair is with Allāh. He will in the end tell them the truth of all that they did",³⁹ and His words, "Verily, this is My Way, leading straight: follow it: follow not (other) paths: they will scatter you about from His Path: thus doth He command you, that ye may be righteous."⁴⁰ A tradition says, "Each innovation is error."⁴¹ This meaning is continuous in traditions.

Suppose it is said: The jurists have classified innovation on the basis of the classification of the *shari'a*, and what is blameworthy out of these in the absolute sense is prohibited. As for the disapproved of, it is not blameworthy⁴² in the absolute sense. What is beyond this is not even considered bad according to the *shari'a*. As for the obligatory and recommended out of these

are good in the absolute meaning, and one who acts on it or derives it (from the texts) is praiseworthy. The permissible is good if acknowledged. On the whole, what has been considered good out of innovation, and what the earlier Muslims have deemed, cannot be called blameworthy, nor is it opposed to the intention of the Lawgiver; rather, it is in conformity with it whatever the nature of such conformity. This is like the collection of the ‘Uthmānī copy of the Qur’ān, gathering in the mosque during Ramaḍān, along with other good incidents on which the Muslims have agreed as to their goodness, I mean the worthy ancestors and the *mujtahids* of the Umma, because what the Muslims (collectively) consider good is good according to Allāh. All these matters are included within the implication of the title of this issue, because these are acts that are in opposition to what the Lawgiver has laid down. They are, however, linked with a compatible intention, for those innovating have not intended anything other than improvement. If this is the case, it becomes obligatory that, contrary to the claim, blame should not be attached to any type of innovation.

The response is: All this is not what is included under the title of the issue. The assumption is that the act opposes the act that the Lawgiver has prescribed, while in the acts brought about by the worthy ancestors and those agreed upon by the jurists there was nothing at all that was laid down by the Lawgiver. The elaboration of this is that the collection of the copy of the Qur’ān, for example, did not take place during the period of the Messenger of Allāh (pbuh) as there was no need for this due to its having been memorized. Further, there had not occurred any disagreement about the text of the Qur’ān that could lead to a disagreement in religion. It was only to be found in one or two incidents, as in the incident of ‘Umar ibn al-Khaṭṭāb with Hishām ibn Ḥakīm (God be pleased with them),⁴³ and the incident of Ubayy ibn Ka’b with ‘Abd Allāh ibn Mas‘ūd (God be pleased with them).⁴⁴ In these the Prophet (pbuh) said, “Do not dispute about the Qur’ān, for disputing about it amounts to disbelief.”⁴⁵ The conclusion on this issue is that the collection of the copy of the Qur’ān was a matter about which there was silence during the period of Prophet (pbuh). Thereafter when differences started creeping up about recitation, one person would say to another, “I deny the way you recite.” The collection of the Qur’ān then became obligatory and a sound opinion on a matter that had not been confronted earlier. There was no opposition to this, otherwise it would necessarily lead to the position that examining each issue that had not occurred in the earlier period would be an innovation. This is a nullity by agreement. This type of examination belongs to the category of *ijtihād* that is a category dealing with the fundamentals of the *sharī‘a* even if no specific text expressly supports it; this is called *al-maṣāliḥ al-mursala*. All new issues settled by the worthy ancestors belong to this category and do not fall short of it in any way. The one who opposes the purposes of the Lawgiver has no basis to rely on. How can he when he says: “What the Muslims (collectively)

consider good is good”⁴⁶ and “My Umma will not collectively agree on an error”⁴⁷ It shows that this collective agreement was in accordance with the intention of the Lawgiver; therefore, it moves out of the category where an act or omission goes against the intention of the Lawgiver. As for blameworthy innovation, it is something that the Lawgiver has laid down with respect to acts and omissions. The resolution of this meaning will be coming up later, God willing.

If the act is in opposition along with ignorance about such opposition, it has two meanings. First, the intention corresponds with the intention of the Lawgiver; therefore, there is no opposition in this meaning. The act is in opposition to what is prescribed, yet acts are determined by intentions. The intention underlying this act is compatible and ignorance has occurred about opposition in the act. A person who does not intend opposition of the Lawgiver at all is not similar to the person who intends opposition with respect to intention as well as act. His act from this perspective is acceptable as a whole and is not rejected in the absolute sense. Second, the act is in opposition to the *shari'a*. The intention of the Lawgiver is to require obedience through commands and prohibitions; therefore, as he has not obeyed, he has gone against the intention of the Lawgiver. This opposition does not conflict with the compatible intention, as that was merely the motivation to act. The reason is that he has not complied with the intention of the Lawgiver in his act, nor has the intention conformed with the act. The combined effect of this is opposition, as if he has committed opposition when the two are taken together, thus obedience is not attained.

Both meanings conflict with one another and this conflict is in preference, because your preference of one will result in conflict with another aspect not preferred; therefore, they conflict as well. It is for this reason that this act has become ambiguous in the *shari'a*. The explanation of this can be seen in reviewing part of the discussion.

If you prefer the meaning of compatible intention to the effect that the person formed an intention for complete obedience and compatibility, then he did not violate the sanctity of the commands of the Lawgiver with such intention. This clashes with the idea that compatible intention is to be qualified with obedience through the lawful and not through the unlawful. If it is so qualified then the intention of the subject does not correspond with the object and it becomes futile. Further, if it does not correspond with the act, it becomes incompatible, because the intention to undertake acts is not lawful when standing alone.⁴⁸

Suppose you were to say: The acknowledgement of the intention was established prior to the scriptural laws, as is mentioned about one who believed in the period of a prophet and rationally acknowledged monotheism, undertaking acts through which he worshipped Allāh when such acts were not acknowledged, for they had not been established through a scriptural law as yet.

It will be said to you: If it is assumed that these people in the period of a prophet did not adopt a prior scriptural law then the intentions existing at that time would be disputed in the absolute sense with respect to their acknowledgement. They would be like their acts whose object was worship. If you uphold the acknowledgement of intention whatever its nature, this would necessarily be so in acts too. If you maintain the non-acknowledgement of the acts, this would necessarily be so in the intention as well. Further, our discussion is about what occurred after the scriptural laws and not what occurred prior to them. If we assume that one who has transmitted from the people of the period of prophethood that they adopted some of the earlier scriptural laws, then the matter is evident.

Suppose it is said: The saying of the Prophet (pbuh), “Acts are determined by intentions”, elaborates that these acts, even if they go against what is prescribed, they are acknowledged. Intentions are like souls of acts. Thus, the act as a whole has become one possessing a soul. If this is the case, it is to be acknowledged. This is different from the case where the intention is contrary, but the act is compatible, or when both are opposite. In such a case, it is a body without a soul, for which the statement “Acts are determined by intentions” is not proved true due to the absence of intention in the act.

It will be said: If conceded, it clashes with the saying of the Prophet (pbuh), “Any act that is not according to our commands is rejected.”⁴⁹ This act is not in conformity with his (pbuh) command. Therefore, it is not acknowledged; in fact, it is rejected. If a body without a soul is not beneficial, the same applies to a soul without a body, because the act here is assumed to be in opposition to the *shari‘a*, it therefore takes the rule of non-existence. The intention, thus, stands alone for a practical rule and cannot be acknowledged. The conflicts multiply in this from both sides. The issue, therefore, is extremely difficult.

It was here that a group of jurists gave predominance to the aspect of intention. They corrected the (aspect of intention in) acts of worship where it was necessary to do so, and they rectified acts of human transactions. Another group inclined towards vitiation in the absolute meaning, nullifying each act of worship or transaction that opposed what was laid down by the Lawgiver, with the inclination being towards the opposition in the act itself. A third group followed the middle course giving effect to both inclinations as a whole, acting upon the requirement of intention from one aspect, and acting upon the requirement of the form of the act from another aspect. Acting upon both aspects is indicated by several issues:

First: a person who utilizes a prohibited thing without being aware of the prohibition gathers in his act a compatible intention – as he will not undertake it without believing it was permitted – and an opposition in the act. The reason is that he undertakes an act that is prohibited. He brings into operation the requirement of compatibility for purposes of waiving of *hadd*

and punishment. He brings into operation the requirements of opposition in completing the act and relying upon it, so that what is valid in it is declared valid in so far as there is a possibility of correction, inclining in this towards the aspect of intention, and ignoring in it what is necessary to be ignored and for which there is no correction.

In this issue, the consideration of both sides has been combined to the extent of suitability in each one of them. It is like a woman who is married to two men where the second husband is not aware of the prior marriage and comes to know of it only after consummating the marriage with her. Marriage to her becomes unlawful⁵⁰ for the first according to the *fatwā* (ruling) of ‘Umar, Mu‘āwiya, and al-Ḥasan. A similar view is narrated from ‘Alī (God be pleased with all of them). A parallel is to be found in the case of the missing person when his wife contracts a second marriage and then he appears. The first person had a superior right prior to her second marriage. The second has a superior right after he has consummated the marriage with her. For the period that is between the contract and consummation, there are two views. A tradition says, “If a woman concludes a marriage contract without the permission of her authorized relatives, her contract is void, void, void. If he consummates the marriage with her she is entitled to her dower for consummating the marriage.”⁵¹ The same reasoning is found in the category of errors during prayer as well as the category of *fāsid* (vitiating) marriage contracts along with their multifarious issues.

Second: a fundamental feature of Mālik’s school – in fact, a fundamental feature of the schools of Companions (God be pleased with them) – is the taking of lack of knowledge into account in acts of worship in the light of forgetfulness as a whole. They counted one who opposes prescribed acts and statements on the basis of lack of knowledge as falling under the rule of forgetfulness. Had the person opposing prescribed acts been deemed to be different from one with an opposing intention, they would have treated him as one doing the act intentionally, as is maintained by Ibn Ḥabīb and those who agree with him, but this is not what is done. The matter is evident in conveying that a compatible intention does have an effect. This is evident in acts of ritual purification, prayer, fasting, pilgrimage and in other acts of worship. The same is the case with many of the human transactions like marriage, divorce, eating, drinking and so on.

It is not to be said: This breaks down in financial transactions, for they lead to compensation both in cases of lack of knowledge and clear intention.

The reason is that we will say: The rule for compensation in financial liabilities is a different one, because mistake is equivalent to intention in giving rise to compensation for destruction of property.

Third: this deals with the evidences indicating removal of liability for mistake in the case of this Umma. The Book says, “But there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts:

and Allāh is Oft-Returning, Most Merciful”,⁵² “Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us.”⁵³ A tradition says, “He (Allāh) said I have already done so.”⁵⁴ Allāh has said, “On no person doth Allāh place a burden greater than he can bear.”⁵⁵ A tradition says, “The liability for mistake, forgetfulness and what they have been coerced to do has been removed from Umma.”⁵⁶ This is a meaning that is agreed upon as a whole and there is no disagreement about it, even though there is disagreement about the nature of the liability removed, whether or not it is specific to the Hereafter. Further, the jurists agreed that removal of liability in the absolute sense is not valid. If this is the case, it becomes evident that both sides of the issue (intention and act) are acknowledged as a whole, as long as an external evidence does not indicate otherwise. Allāh knows best.

The Fifth Issue: Interests Causing Injury to Another

If the acquisition of interest and the repelling of injuries are permitted, then this may be permitted in two ways: first, that such acquisition does not lead to injury to another; and second, that it does necessarily lead to such injury. This second way has two further types: first, that the one acquiring the interest or repelling the injury intends injury to another, like one seeking a facility with respect to his goods intending earning a livelihood when an intention to injure another accompanies this; second, that he does not intend injury to anyone. The latter has two types as well: first, that the injury be general, like the destruction of goods, intercepting goods before they reach the city and sale by a resident of the city on behalf of a villager (brokerage), refusal to sell his house or land when the people are under a compelling need to build a congregational mosque there or need it for something else; and second, that it be particular. And this too is of two types: first, that an injury is caused to the one acquiring an interest or repelling harm by refusal to act, which creates a need to act on his own behalf, like one seeking to evade injustice caused to him when he knows that if he does so the injustice will be faced by another, or when he is the first to buy food, or other need, or hunts, gathers wood or water when he knows that if he does so the removal of such thing will injure another, but if this is taken away from him he will be harmed; second, that no injury is associated with his act. And this is of three types: first, an act that certainly leads to mischief, I mean the usual certainty, like digging a well behind the house door in a dark place so that one entering will fall into it with a certainty and without doubt; second, an act that will rarely lead to some mischief, like digging a well in a location where it is not likely that someone will fall into it, or like consuming food that usually does not harm anyone, and the like; and third, an act that

usually leads to a mischief though rarely it may not. And this may be of two types: first, when it is usual like the sale of arms to the enemy, grapes to the winemaker, and an act that deceives by one whose habit is to defraud others, and so on; and second, an act that often leads to mischief though not most of the time. These, in all, come to eight types:

First: as for the first,⁵⁷ it retains its basis of permissibility. There is no ambiguity about it, nor is there a need to reason it out for providing an evidence of the initial permissibility.

Second: there is no ambiguity in denying the intention to cause injury in so far as it is an injury.⁵⁸ This is due to the affirmation of the evidence that in Islam no injury is to be caused and none is to be borne. The examination of the act, which gathers within it benefit to one's self and the intention to injure another, remains – that is, whether it should be forbidden so that it becomes an act that is not permitted. In the alternative, should it retain its original rule of permission, and sin be assigned to him for what he intended? It is on this basis that disagreement is conceived as a whole, and it applies to the issue of prayer in a usurped house. Along with this there is a probability of some detail in the related *ijtihād*.

The issue is whether or not he will attain his objective if he moves to another act, when the first act is prevented, to seek the securing of his interest or the repelling of the injury. If he does then there is no difficulty in preventing the act, because he intended this form only to cause injury to another. He will move away from it and no harm will be caused to him, just as he would be prevented from the act if he did not intend anything other than causing injury. If he does not have an option except the commission of such an act through which another will be injured, then the right of this person seeking the benefit or repelling an injury has priority. He is, however, prohibited from intending injury. It is not to be said that this amounts to an obligation to do the impossible, for he is under an obligation not to intend injury to another, which is included in the act of earning, and he is not obliged for the negation of actual injury.⁵⁹

Third: preventing him from the act may either lead to a resulting irreparable injury to him or it may not. If it does lead to it, his right will be given priority without qualification. This is based on the disagreement about the issue, with a weak source, which the experts on *uṣūl* have assumed in the case where the Unbelievers use Muslims as shields, and it is known that if the persons used as shields are not killed the followers of Islam will be totally uprooted. If this loss (of killing the shields) is repairable or it can be undone as a whole, then the consideration of general injury has a priority. The individual who seeks to benefit or to repel an injury is to be prevented from what he attempted to do because general interests have a priority over particular interests,⁶⁰ on the argument derived from the prohibition of going out to meet the caravans bringing goods to the city from the villages with a resident of the

city becoming a middleman for the villagers. Further, there is the agreement of the worthy ancestors about placing liability for loss on artisans (if they cannot prove absence of negligence) whereas the original rule was to treat them as trustees having no liability.⁶¹ The Companions (God be pleased with them) took away land (with compensation) for extending the Mosque of the Messenger of Allāh (pbuh) when some of the owners agreed to part with the land and others did not. This implies the giving of priority to public interest over private interests, with the condition that no (irreparable) injury should result to the private person.⁶²

Fourth: the matter as a whole implies two types of examination: an examination from the perspective of establishing benefits, and an examination from the perspective of relinquishing them. If we consider benefits, then (the right of) the acquirer of benefits or one who repels an injury has precedence even if he injures another thereby. The reason is that the acquiring of benefits and repelling of injuries is intended and required by the Lawgiver. It is for this purpose that permission is granted for the consumption of carrion and other consumable things prohibited, the sale of a *dirham* for a *dirham* with a delay due to a dire need of the borrower and as a facility for the servants, selling moist dates for dry (*ʿarāya*) for meeting a need through charity – along with many other things in which the evidences indicate that this is the intention of the Lawgiver. If this is established, (it may also be seen that) the right of a human being is legally affirmed in whatever he acquires first, through gathering and by excluding others. In reaching a thing first he does not oppose the intention of the Lawgiver; therefore, it is valid. It becomes evident through this that giving priority to the right of one coming later over that of the person who was first is not the intention of the Lawgiver, unless the first person relinquishes his right, but this is not binding on him. In fact, his personal right is ascertained for him in the case of necessities, and he does not have a choice in surrendering such a right. The reason is that this right has been based on an evidence, while the right of the other person is based on conjecture and doubt. All this is evident in the case of repelling of injuries, and so also in the case of the acquisition of interests when their absence causes injury to him.

Dāwūdī was asked: What do you think about the person who is able to evade this penalty, which they have come to call *kharāj* to be paid to the sultan, should he do it? He said “Yes, and he has no other legal option except to do this.” If the sultan imposes it (collectively) on the people of the land and he takes a known amount from them, which they then allocate among themselves, then should a person who can evade this do so? And if he does so, the remaining people of the land will have to pay the entire amount imposed on them. He said, “He has this right. This is indicated by Mālik’s statement, where the official takes away a goat from one of the partners when all of them taken collectively are not subject to a charge, to the effect that this

is injustice imposed on one from whom the goat was taken, for he cannot have recourse to his partners for recovering anything.” He also said, “I do not adopt in this what has been related from Saḥnūn, because injustice cannot serve as a precedent. Further, it is not binding on anyone to submit himself to injustice out of fear that it will be imposed on someone else. Allāh, the Exalted, has said, ‘The blame is only against those who oppress men with wrongdoing and insolently transgress beyond bounds through the land, defying right and justice: for such there will be a chastisement grievous.’” This is what he said. I also saw in some reports something similar from Yaḥyā ibn ‘Umar who maintained that there is no harm in deflecting it from himself even when he knows that it will be deflected towards someone else, provided the thing deflected is gross injustice. ‘Abd al-Ghanī has stated in *al-Muṭtalif wa-al-Mukhtalif* from Ḥammād ibn Abī Ayyūb, saying “I said to Ḥammād ibn Abī Sulaymān: ‘I speak up and the misfortune is removed from me, and when it is removed from me it is imposed on someone else.’ He replied: ‘It is your right to speak for yourself. If it is removed from you then do not concern yourself with where (on whom) it will be imposed.’”

Within this is the issue of giving a bribe to ward off injustice, if there is no way other than this of doing so. Other examples are of giving money to the enemy, and to the unbelievers as ransom for freeing prisoners of war, as well as the payment of protection money by *ḥajj* pilgrims. All this amounts to acquisition of a benefit or repelling of an injury by facilitating an offence. The seeking of merit through *jihād* is also like this, although it leads to the death of unbelievers or the killing of Muslims by unbelievers. In fact, the Prophet (pbuh) has said, “I would have liked to be slain in the path of Allāh, to be raised up again, and to be slain again.”⁶³ This necessarily leads to the sending of his slayer to hell. One of the sons of Adam said, “For me, I intend to let thee draw on thyself my sin as well as thine, for thou wilt be among the companions of the fire, and that is the reward of those who do wrong.”⁶⁴ All punishments are in fact the acquisition of benefits and repelling of injuries that necessarily lead to an injury to someone else, except that in these there is the elimination of the aspect of injury, for it is not intended by the Lawgiver in the legislation of the *aḥkām*. The reason is that the acquisition of benefits and the repelling of injuries by the individual have priority, and the discussion about this has already preceded.

Suppose it is said: This becomes difficult in a number of issues. The settled principle is that “no injury is to be borne and none is to be caused”, but what has been said above invokes injury, thus, it is not lawful according to the requirement of this principle. This is supported by coercing the owner of food to feed one in a state of duress – either by way of a commutative transaction or gratis – when the owner of the food is in need of it himself, but it is taken from his possession by force as his holding on to it will lead to an injury to the one in duress. The same applies to the release by the ruler of food in the

possession of the hoarder, because denying him such release will lead to an injury to others. There are other examples of this too.

The response is that in all this there is no difficulty. The reason is that injury to another in all the preceding issues as well as that contemplated in the general principles is not the objective of the permission. The permission is merely for acquisition by the one acquiring and repelling by one repelling the injury. The fact that it necessarily leads to injury (to another) is a matter that is external to the requirement of the permission. Further, there are two types of injuries that clash here: injury to the owner in possession, and injury to one who does not have possession nor is he an owner. It is known through the *shari'a* that priority is given to the owner in possession, and this rule is not opposed when there is a clash of rights. The conclusion is that permission in so far as it is permission does not necessarily lead to injury. How can this not be when it is the act of the Lawgiver to prohibit it? Do you not see that when the person acquiring an interest, or repelling an injury, intends an injury he commits a sin, even when he is in need of committing the act? This should indicate to you that the Lawgiver has not intended injury, rather He has prohibited such injury, and that is injury to the owner in possession.

As for the issue of one under duress, it supports us. The reason is that the one coerced to give food is not in need of that particular food – that is, a need that will injure if the food is absent, for if that was assumed coercing him would not be justified. This is the core of the disputed issue. A person who will not be injured is coerced to give away the food, so understand this. As for the hoarder, he is an offender by virtue of his hoarding, who has violated a prohibition and has injured people. The ruler is under a duty to repel the injury he is causing to the people in a manner that does not injure the offender. Further, it belongs to the category of the third type in which a ruling is made against private persons for the sake of the public. All this is true when benefits are taken into account.

If benefits are not taken into account, then two situations can be conceptualized:

First situation: the relinquishment of selfishness and inclining towards co-operation are the same, and this is highly praiseworthy. This is what was done during the period of the Messenger of Allāh (pbuh). The Prophet (pbuh) said, “The Ash'ariyyīn, when they are short of rations in battle or when, in the city, the food for their families is inadequate, gather what they have in a cloth and then distribute it among themselves in a single utensil. They are from me and I am from them.”⁶⁵ In this case, the one relinquishing his benefit views others like he views himself, as if they were his brothers, sons, close relatives, orphans or someone else whose maintenance was recommended or obligatory. He is appointed among Allāh's creation for welfare, oversight, and the provision of needs, and in this he is one of them. When he acquires this position, he does not gather things for himself to the exclusion of others,

rather he is like one who is responsible for their maintenance, just as a real father is not able to monopolize food by excluding his children. This was the arrangement of the Ash'ariyyūn (God be pleased with them); therefore, the Prophet (pbuh) said, "They are from me and I am from them", because he (pbuh) was the highest *imām* for this purpose, while in affection he was the father at the apex, for he did not gather anything for himself while excluding the Umma. It is reported by Muslim from Abū Sa'īd, "While we were travelling with the Messenger of Allāh (pbuh) there came a man on a ride. He (the narrator) said that he started looking towards the right and the left. The Messenger of Allāh (pbuh) then said, 'Anyone who has an additional ride should give it to one who does not have a ride, and anyone who has surplus provisions should give them to one who has no provisions.' He (the narrator) said that he continued to name different categories of wealth until we thought that none among us has a right over anything that is surplus." The tradition also mentions the words, "In wealth there is a right that is besides *zakāt*." The legality of *zakāt*, lending, undertaking the *ʿarīya* transaction, donating in charity and other categories besides these, are affirmed in this context. And all these are operative by way of higher ethical norms, which do not allow selfish gathering. In this manner, no injury is caused to the actor except to the extent of that caused to all, or even less, and he does not inflict on himself any immediate injury; it is only expected and minor, which he bears by repelling injury from others. This is the approach of one who considers all Muslims as a single body in accordance with the saying of the Messenger of Allāh (pbuh), "The believer in relation to another believer is like a compact structure with one supporting the other",⁶⁶ his saying, "The believers are like a single body: when one limb complains the remaining body responds through wakefulness and fever"⁶⁷ and "A believer prefers for his brother what he prefers for himself."⁶⁸ There are other traditions that convey the same meaning. The support of a believer for a believer is not complete except when these meanings are realized with these causes. Likewise, they cannot be like a single body unless the benefit accruing to all of them is equal, with each one getting what is suitable for him, just as each limb of the body absorbs an quantity of food that is based on a balanced distribution without excess or deficiency. If some of the limbs were to take in excess of what they need or less than what is needed, the balance would be disturbed. The basis for this is in the Book, as described by Allāh with reference to the believers, that some of them are guardians for others, and they have been commanded to come together in brotherhood giving up dissension. This occurs frequently in the Book, because things cannot be set right except through these methods and others similar to them, and which are to be used as a basis for recourse.

Second situation: Preferring others to oneself (altruism). This is a deep-rooted basis for relinquishing benefits. It is done by a person relinquishing his own benefit for the benefit of another, relying on a sound conviction, with true

trust in Allāh, and while bearing hardship for helping a brother out of love for Allāh and for His sake. This is the most praiseworthy of traits and the purifier of acts. It is established from the acts of the Messenger of Allāh (pbuh) and his most pleasing personality. He (pbuh) “was the best of all people in generosity, and the most generous during the month of Ramaḍān. When he met Jibrīl, he became generous like the laden winds.”⁶⁹ Khadija (God be pleased with her) said to him, “You bear the burden of the deprived, give earning to those in want, and provide support against adversities faced on the true path.”⁷⁰ Once, ninety thousand *dirhams* were brought to him. He placed them on a mat and started distributing them. He did not refuse anyone seeking alms, until he was finished distributing. A man then came seeking help, so he said, “I have nothing left now, but buy on my credit. When the claim comes to me I will pay it.” ‘Umar (God be pleased with him) said to him, “Allāh has not placed you under an obligation that you cannot bear.” The Prophet (pbuh) did not like this. A man from the Anṣār then said to him, “O Messenger of Allāh, spend and do not fear decrease from the Lord of the Throne.” The Prophet (pbuh) smiled and his face reflected happiness, “This is what I have been commanded to do,” he said. It has been recorded by al-Tirmidhī.⁷¹ Anas said, “The Prophet (pbuh) did not store anything for the next day.”⁷² This is sufficient. The same was the practice of the Companions (God be pleased with them).

You know what has been said in the elaboration of the words of the Exalted, “And they feed, for the love of Allāh, the indigent, the orphan, and the captive”⁷³ and “And those who before them, had homes (in Madinah) and had adopted the Faith – show their affection to such as came to them for refuge, and entertain no desire in their hearts for things given to the (latter), but give them preference over themselves, even though poverty was their (own lot).”⁷⁴ There is then the tradition from ‘Ā’isha (God be pleased with her), and it is mentioned in the chapter on causes within the *Kitāb al-Aḥkām* under the discussion of practising the relinquishment of benefits.⁷⁵

Altruism is of two types. The first is altruism with respect to ownership and this may be in wealth or even through separation from one’s wife so that she may become lawful for the one for whom the sacrifice is made. The second is with respect to life, as is stated in a sound tradition that Abū Ṭalḥa became a shield in front of the Prophet (pbuh) during the Battle of Uhud when the Prophet (pbuh) tried to emerge from the sides so that the people could see him. Abū Ṭalḥa said to him, “Do not show yourself O Messenger of Allāh, for an arrow shot by the enemy may strike you. My chest is in front of yours.” He kept on shielding the Messenger of Allāh (pbuh) until his arm was paralysed.⁷⁶ This is known from the acts of the Prophet (pbuh) for he used to be the closest to the enemy in battles as compared to others. One night the people of Medina were terrified due to a voice and they started moving towards the voice. The Messenger of Allāh (pbuh) was returning towards them for he had preceded them in moving towards the voice. He had gone to verify the incident riding

bareback on Abū Ṭalḥa's horse with a sword swung around his neck. He was saying, "Do not be upset."⁷⁷ This is the act of one who prefers others over himself. There is then the well-known report about Alī ibn Abī Ṭālib (God be pleased with him) that he slept on the bed of the Messenger of Allāh (pbuh) when the unbelievers had resolved to kill him.⁷⁸ By way of a proverb, it is said: The willingness to sacrifice one's life for others represents the utmost form of altruism. Among the Sufis are those who identify "love" as altruism. The statement of the wife of the 'Azīz in the story of Joseph (pbuh) also indicates this, "(The king) said (to the ladies): 'What was your affair when ye did seek to seduce Joseph?' The ladies said: 'Allāh preserve us! No evil know we against him!' Said the 'Aziz's wife: 'Now is the truth manifest (to all): it was I who sought to seduce him. He is indeed of those who are (ever) true (and virtuous).'"⁷⁹ She made a sacrifice in absolving him and accepting the blame herself.

Al-Nawawī has said that the jurists agreed about the merit of sacrifice in terms of food and other things as well as physical benefits for the purpose of worldly matters, but this is distinguished from acts of nearness to Allāh as the right of Allāh is linked to them. This type when considered with what is before this⁸⁰ is at different levels. The people differ in this in accordance with their circumstances when they are attributed with the traits of mere trust and perfect conviction. It is reported that the Prophet (pbuh) accepted, as a donation, the entire wealth of Abū Bakr (God be pleased with him), half the wealth of 'Umar (God be pleased with him), and brought down Abū Lubāba and Ka'b ibn Mālik to one-third. Ibn al-'Arabī said that this was due to their lower grade as compared to Abū Bakr and 'Umar. This is what he said.⁸¹

The conclusion is that sacrifice here is based on the relinquishment of the benefits of this world. Thus, the bearing of injury associated with this cause is not considered objectionable, as it does not disturb a purpose of the *shari'a*. If it does upset a purpose of the *shari'a*, it is not to be counted among the relinquishment of benefits nor is it to be considered praiseworthy under the *shari'a*. As for its not being praiseworthy under the *shari'a*, the reason is that the relinquishment of rights is either due to an order from Allāh or due to another reason or even another thing. Relinquishment for nothing is futile and is not expected from rational persons. The fact that it is due to a command from Allāh goes against the idea of its disturbing the purpose of the *shari'a*, because such disturbance cannot be caused by the command of Allāh. If this is not so then it is in opposition to it, and opposition to His commands is the opposite of bringing about a compatible act. This establishes that relinquishment is due to a third reason, which is benefit. In the preceding discussions, the complete treatment of the issue of relinquishment of benefits has been undertaken. This completes the discussion about the fourth type, and through it it is possible to understand the preceding three types in the context of the relinquishment of benefits.

Fifth: as for the fifth type, it is an act in which no injury is caused to the one acquiring benefits or repelling harm, but a mischief almost always ensues in practice. This is subjected to two types of examination. The first examination is from the perspective of his intending something that can be lawfully intended under the *shariʿa*, without intending an injury to another. It is permitted from this perspective and is not prohibited. The second examination is from the perspective of his being aware of the necessary injury to another emerging out of this intended act, along with his not seeking injury by its relinquishment. In this sense, it is the outward indication of the intention of causing injury. The reason is that he may merely be bringing about the permitted act without there being a link between this act and a necessary purpose, or a supporting need or even a complementary value, thus, there would be no intention of the Lawgiver in its occurrence in so far as it does occur. Then again, it may be an act that is commanded and performed in a manner that gives rise to an injury, with the possibility of its performance in a manner with which no injury can be associated. The Lawgiver has no intention with respect to its occurrence in a manner in which an injury may or may not be associated with it.

In both situations, the intending of this act in this manner, while being aware of the likely injury, will give rise to two cases. It is either a deficiency in the examination of the commanded act, and this is not allowed, or it is the intending of the injury itself, which is also not allowed. It necessarily follows that he is prohibited from undertaking this act, but if he does undertake it then he will be considered a transgressor through his act. He will be liable to pay compensation of a transgressor in general. The compensation, however, will be examined in accordance with life or property as they pertain to each case, yet he will not be deemed to have intended it, because his intention to commit transgression was not realized. It is in accordance with this rule that the issue of prayer in a usurped house or slaughter with a misappropriated knife will be determined. The same applies to related issues in which the acts are essentially permissible, but they necessarily lead to injury to another. It is because of this reason that acts of worship, according to the majority of the jurists, are valid and rewarded with the basic act being valid. The worshipper becomes a sinner when viewed from the other extreme, and is liable to compensation if there is compensation involved. A conflict in the rules does not occur due to the variety of possibilities present. Those who uphold vitiation in that aspect will hold it here too, and they have the wide expanse of *fiqh* before them on which they base their principle. This is from the perspective of establishing benefits. It is known that those who uphold the relinquishment of benefits do not classify it under acts that are of this nature.

Sixth: this pertains to an act that rarely leads to an injury, and the act continues to be based on permissibility. The reason is that if it usually leads to the securing of an interest then rare exceptions creating disturbance are

not taken into account; and in practice there is no secured interest that is devoid of injury on the whole. The Lawgiver, however, has acknowledged the predominance of interests in the practices of the *shariʿa*, and He did not take into account exceptional injuries; the coming into existence of the laws is based upon the operation of the practices. In the present case, the intention of the intending actor, with respect to the acquisition of benefits and repelling injuries with the knowledge of the rare occurrence of injuries, is not to be treated as a shortfall in understanding or an intention to cause injury. The act, therefore, continues to be based upon legality.

The evidence for this is that we have found the rules of legality to have this nature, like judgements based on evidence in cases of homicide, property and sex offences, even though there is a possibility of perjury, suspicion and mistake. There is also the permissibility of curtailment of prayer in a journey of limited distance, with the possibility of absence of hardship as for an affluent king, when it is prohibited in a settled area for those pursuing strenuous occupations. The same applies to the operation of individual narrations and individual syllogisms in obligations with the possibility of their being defective or erroneous from different aspects. All this is rare; therefore, they are not taken into account, and the predominant interests are acknowledged. This is settled on its proper occasion in this book.

Seventh: this pertains to an act whose performance can probably lead to an injury, due to which reason it is a ground for disagreement. As for the bases of permissibility and permission, they are evident, as has preceded in the sixth type. As for the probable occurrence of injury and harm, the issue is whether or not probability works in the same way as certainty, thus prohibiting both situations that were mentioned, due to the possibility of falling short of the mark even if that is rare. The consideration of probability here is preferred, due to several reasons:

First reason: probability operates in different categories of practices like certainty. It is obvious that it is operating here.

Second reason: The cases of the blocking of the lawful means to an unlawful end (*sadd al-dharāʾiʿ*) fall under this category. The illustration is in the words of the Exalted, “Revile not ye those whom they call upon besides Allāh, lest they out of spite revile Allāh in their ignorance.”⁸² They had said, “Abstain from reviling our gods otherwise we will revile your God”; therefore, the verse was revealed.⁸³ A tradition says, “Among the most grievous sins is that of a man cursing his parents.” The Companions (God be pleased with them) said, “O Messenger of Allāh, is there anyone who reviles his parents?” He (pbuh) said, “Yes. A man reviles another man’s father and he in turn reviles his father. He reviles his mother and he in turn reviles his mother.”⁸⁴ The Prophet (pbuh) restrained himself from slaying the hypocrites, because that would have led to the unbelievers saying, “Muḥammad slays his companions.”⁸⁵ Allāh prohibited the believers from saying, “Rāʿina”⁸⁶ to the Prophet (pbuh) even

though their intention was good, because the Jews would have adopted it as a means to revile the Prophet (pbuh). There are many other cases and all are based upon their original rule,⁸⁷ but the rule of the means towards it became probable.

Third reason: It is found in co-operation extended in sin and vile intentions that are prohibited.

The conclusion to be drawn in this type is that the probability of harm or injury cannot stand in the place of the intention to do harm. The basis is the permissibility of acquiring benefits and repelling harm, without recourse to external necessary consequences. Nevertheless, when interest (*maṣlaḥa*) gives rise to mischief through categories of legal fictions or co-operation in sin, it is prohibited from this aspect and not due to its original rule; because the one bringing about the cause merely intended his personal interest. If it is construed as transgression, then it is from the aspect of negligence, which is of a lesser grade than that in the fifth type. It is for this reason that a disagreement arose about it – that is, whether or the outward indication of a thing stands in the place of the intention itself to attain the thing.

The above is the examination of the affirmation of benefits. As for the examination of their relinquishment, then those who do this under this type are similar to those discussed in the fifth type, as distinguished from the sixth type, because a human being does not have the ability to avoid it in practice.

Eighth: this pertains to an act whose performance results in injury, many times though not usually and not rarely; this is the subject of examination and so is its probability. The original rule in this is the validity of permissibility, as is upheld by the Shāfiʿī school and others, because certainty and probability are negated due to the occurrence of mischief. The reason is that there is only a probability of its occurrence and non-occurrence, and there is no circumstantial evidence to give preference to one side over the other. This is especially true as the probability of the intention to bring about a mischief or harm does not stand in place of actual intention nor is it required due to the obstacles of ignorance and other things that stand in the way of its coming into existence.

Further, it is not proper to deem the person acquiring benefits or repelling injuries in this case as negligent or one having an intention as is done in the case of certain or probable knowledge. The reason is that construing this as having an intention for either is no better than construing it as his not having an intention. If this is the case, then bringing about a permissible cause becomes a strong basis. Mālik, however, acknowledges it in the case of *sadd al-dhariʿa* based on the fact that the intention occurs many times. The reason is that intention cannot be ascertained, because it is a matter that is internal, but it has an application here and that is its occurrence on many occasions or the act is treated as the outward indication of intention. Just as the outward indication is acknowledged, even if it can possibly fail, the fact of occurrence

many times is also acknowledged as it is within the scope of intention. The basis for this is the tradition in which the *umm al-walad* of Zayd ibn Arqam is mentioned.⁸⁸

In addition to this, a rule may be legislated due to an underlying cause even when this cause is not found many times, as in the case of the *ḥadd* penalty for drinking wine. It is legislated for deterrence, when deterrence occurs through it many times but not most of the time. We have taken its occurrence many times in the face of a fundamental principle. The fundamental principle is the protection of a human being against the infliction of injury and pain, just as the basis in our issue is permission. We move out of the principle here due to the rationale of deterrence, and Mālik moves out of the principle of permissibility to prohibition, due to the rationale of *sadd al-dhariʿa* (blocking the lawful means to an unlawful end).

This type participates with the previous type in the occurrence of the injury many times. As such occurrence was taken into account for prohibition there, it is also taken into account here.

There are numerous texts that support this type. Thus, the Prophet (pbuh) has forbidden the mixing of two commodities, the drinking of mead more than three times, the making of mead in utensils that may convert it into wine. He (pbuh) elaborated that he prohibited these things so that they may not become a means (to other acts). Thus, he said, “Had I exempted this, you would have made such (prohibited) things” – that is, human beings do not stop at the permitted limits in such things. The occurrence of injury in these matters is not usual in practice, even though it happens many times. The Prophet (pbuh) prohibited seclusion with a woman who is not in the prohibited degree of marriage, and that she should travel without a close relative (in the prohibited degree of marriage). He also prohibited the making of mosques over graves as well as praying in such mosques, the combining in marriage of a woman, her paternal aunt or maternal aunt. He (pbuh) said, “If you do this you will be rupturing their wombs (that is, their relations).” He prohibited marriage beyond the four permitted marriages due to the words of the Exalted, “That is the minimum to prevent you from doing injustice.”⁸⁹ He prohibited the making of an express proposal to a woman in her waiting period, as well as marrying her. For the woman in the waiting period following death of her husband, the using of perfume, adornment and all other things leading to marriage are prohibited (during the waiting period). Likewise the use of perfume and the marriage contract for one in the ritual state of *iḥrām*. Prohibited are also sale and a loan in a single transaction, the giving of gifts to the creditor, inheritance for the murderer and hastening the fasting of the month of Ramaḍān by a day or two. Prohibited too is fasting on the day of *id al-fitr*, while it is recommended that breaking the fast should be prompt while abstaining from eating to commence fast should be delayed (as much as possible). There are other things besides these that are all a means, and for

purposes of intention, injury and harm occur many times but are not usual or predominant. The *shariʿa* is based on caution and the adoption of prudence as well as the avoidance what may lead to injury. If this is known on the whole, as well as through the details, then acting upon this rule is not an innovation in the *shariʿa*; rather, it is one of its fundamental principles. It reverts back to the necessary, the essential need, and the complementary value. Perhaps it will be ascertained in the *Book of Ijtihād*, God the Exalted willing.

The Sixth Issue: Securing of Interests for Others

When a person is placed under an obligation to secure his personal interest, it is not the duty of another person to undertake the securing of that interest even if he possesses the will to do so. The evidence is provided for this from various perspectives:

First: interests in religion are either those that pertain to the Hereafter or they pertain to this world. As for those that belong to the Hereafter, there is no way for another person to stand in the place of the subject as indicated above. The discussion, therefore, is not about this, for no one can deputize for another. The examination here is of the interests of this world, which do accept delegation. If we assume that he is personally obliged to secure them then they ascertained for him (he is under a universal obligation). If they are ascertained for him, then any idea of liability of another to secure them is discharged due to the act of ascertainment. Another person cannot, therefore, be placed under such an obligation at all.

Second: if another person was also placed under such an obligation, the obligation could not have been ascertained for the subject, nor would it have been required of him. The purpose is the securing of an interest, or the repelling of an injury, and if another person undertakes it under the rule of obligation, it necessarily implies that the first person was not subject to such obligation at all. Yet, we have assumed that he is a subject on the basis of personal ascertainment. Thus, this is a substitution that is not valid.

Third: if another person was under the obligation, it would either be a universal obligation or a communal obligation. In both cases, it would not be valid. As for the universal obligation, the matter is viewed as has preceded. If it is a communal obligation, then the assumption already made is that he is subject to a universal obligation and not a communal obligation. Thus, it necessarily follows that it is obligatory for him as a universal obligation and is not obligatory on him as a universal obligation in the same situation. This is impossible.

The only exception is when a necessity is attached to it. In such a case, the obligation is waived due to such interests or some of them, along with his being in a state of duress. It is then that it will become obligatory on another to fulfil it. For these reasons *zakāt*, charity, granting of an interest free loan,

co-operation, bathing of the dead and their burial, taking care of minors and the insane with their welfare in view, along with other such interests, which the needy cannot meet, or where the injuries cannot be repelled, were legislated. It is in such cases that it is said: whenever a person has not been required to secure his interests, such interests are secured through others, in a manner that this other person is not injured. Thus, in the case of a slave, whose interests stand merged with the interests of his master, the master is required to undertake the securing of the slave's interests. The same applies to a wife whom the Lawgiver has assigned to the authority of the husband. He possesses the benefits of the wife in terms of cohabitation with her and the upbringing and maintenance of his children and house. He is thus under an obligation to maintain her. Allāh, the Exalted, has said, "Men are the protectors and maintainers of women."⁹⁰

The Seventh Issue: Ability to Secure Interests

Each subject who is liable for securing the interests may have the ability to secure his own interests or he may not have such ability, I mean, interests pertaining to this world that he needs to secure.

If he does have the ability to secure them without hardship, then another person is not obliged to secure his interests. The evidence for this is that if he is able to secure all interests, and he is under an obligation to do so, then the interests sought through such obligation are attained through this subject. The demand for attaining them through another is not valid, because it is a demand for attaining what is already attained. This is not possible. Further, what has preceded in the previous issue applies here too.⁹¹ The illustration is the master, husband and father with respect to the slave, male or female, wife, and children. As he has the ability to secure his own interests as well as the interests of those under his authority, a third person is not to be asked to secure their interests, nor is he under an obligation to do so. If we assume that he does not have the ability to secure the interests of others, the demand from him of doing so will be waived, and it will remain to be seen what kind of injury will result for the wife, the male slave and the female slave. The examination of the issue will be from a different perspective,⁹² which does not affect this determination.

If he does not have the ability at all to do so or he does have it but with great hardship, which is acknowledged for waiving, then the relevant interests pertaining to the other person may be public or private. If the interests are private, they are waived, and it is his interests that are given preference, because under the *shari'a* his rights have priority over those of others, as has preceded in the fifth issue of the fourth category; the idea there is applicable directly, unless he gives up his benefit. This is another view that has also been elaborated.

If the interest pertains to a public matter, then those to whom the interest is related are to undertake to secure it in a manner that does not undo their primary interests or involve them in an injury that is equivalent to the interest or even go beyond it. In such a case, it is said to the subject, "You must secure what pertains to you and applies generally to others, even if it applies to you specifically, even if it applies to others alone." The first part is not valid, because we have assumed something that is impossible to perform, or something in which there is hardship in meeting the obligation. He cannot be subject to such obligations at all. The second part too is not valid, because a public interest has priority over private interests, as has preceded in an earlier discussion, unless it causes a personal injury to the subject, for he is not obliged for things other than those that pertain to him according to the dispute about the issue.⁹³ In this case, it is possible for others to undertake the securing of the private interest. In fact, it is obligatory on them otherwise it will lead to the preference of the private interest over the public interest in the absolute sense without there being a necessity. This is a nullity on the basis of evidences that have preceded.⁹⁴ When the securing of interests becomes obligatory for them, the securing of the public interests alone becomes a universal obligation for this subject, which is the third of the assumed types.

Sub-Issue: The Maintenance of an Individual from the Bayt al-Māl

If it is determined that his third type has become a universal obligation for a subject whose interests are being secured by others, then the condition for their securing his interests is that their own interests are not lost nor is an injury passed on to this subject.

This was determined during the period of worthy ancestors as the *shariʿa* appointed a reserve in all wealth for the interests of the Muslims, in which there is no particular right other than those unqualified interests that happen to occur. This is the wealth of the treasury. Thus, for the securing of the interests of this subject this particular manner has been determined. To this are related the *amqāf* (trusts) that have these particular objectives. The securing of the interests is, thus, attained from both sides, and no injury is caused to anyone on either side. If another method is assumed, there would be injury for one securing the interests as well as for those whose interests are being secured.

As for the injury caused to one securing (public) interests, it is from the perspective of a favour being done on the part of those who are securing his interests for they have been obliged to secure specified interests. Favours are something to be rejected as determined by thinkers who deal with the field of good practices. The Lawgiver too has determined such a meaning on numerous occasions. It is for this reason that the jurists have stipulated for the validity of a gift its conclusion through acceptance by the donee. A group of jurists have maintained that if water is gifted to one who does not

find water for purification, it is not binding on him to accept it and he may perform *tayammum* instead. There are other examples too. The basis for this are the words of the Exalted, “O ye who believe! Cancel not your charity by reminders of your generosity or by injury.”⁹⁵ He, therefore, deemed reminders of generosity as one factor that annuls the spiritual reward for charity, and what else is this other than the infliction of injury on one who is being given charity. This idea is present in all that has been assumed in this category. This is one aspect of it.

The second aspect is linked to it through associated doubts and suspicions at the time of accepting what is assigned. It is for this reason that it is not permitted by agreement for the judge (*qāḍī*), and for all other officials, to accept wages from the litigants or from one of them for rendering decision on their issue. The acceptance of gifts is prohibited for officials. The Prophet (pbuh) deemed it purloining which is a most grievous sin. As for injury incurred by one repelling harm, it is seen from the perspective of the burden of performing functions upon appointment. This may become easy for him at times or under some circumstances to the exclusion of others, or even with respect to some person, but there is no fixed rule in this to which recourse can be had. The reason is that for one performing the function it becomes something like the imposition of *jizya*, which does not have a lawful basis if it is imposed on slaves or on wealth. It is linked to what runs counter to the very basis of the interest that the subject has been asked to secure. This arrangement becomes a means for inclining towards extremes in the securing of interests, and it becomes a cause for the annulment of rights and affirmation of what is a nullity; this is the opposite of the principle of *maṣlaḥa*. For the first aspect, the negation of this has been laid down in the Qurʾān, in the following words, “No reward do I ask of you for it: my reward is only from the Lord of the Worlds”,⁹⁶ “Say: ‘Whatever reward do I ask of you, it is yours: my reward is only due from Allāh. And He is witness to all things’”⁹⁷ and “Say: ‘No reward do I ask of you for this (Qurʾān), nor am I a pretender’”⁹⁸ as well as all other texts in this meaning. From the other aspect, the consensus (*ijmāʿ*) of the jurists is the reason for the prohibition of taking wages from litigants. All this is a matter of utmost clarity. Allāh knows best.

Sub-Issue: Causing Injury to One’s Self

All this applies when the interest to be secured is a public interest that is being secured by another and in which an injury or harm is invoked that pertains to this world.

If the associated injury affecting the subject is of this world, and another person cannot secure this interest, then it is like the issue of “shields” and like those similar to it. A disagreement prevails about this issue, as has preceded. The principle of “prohibition of obligation that is impossible to perform” is witness to the fact that there is no obligation in such cases. The principle of

“giving priority to the public interest over the private interest” is witness to the fact that such obligation is to be borne. They affect this subject from two sides, but there is no conflict between them. It is for this reason that disagreement in it is deemed probable.

If the relinquishment of benefits is assumed in this category, then the aspect of public interest is to be given preference. This is indicated by two things. First, the principle of sacrifice that is mentioned earlier. This type of case falls under its rules. Second, the texts laid down about sacrifice in the story of Abū Ṭalḥa where he shielded the Messenger of Allāh (pbuh) with his own body. He had said, “My chest is in front of yours”, and he continued to defend him until his arm became paralysed; the Prophet (pbuh) did not negate this. The preference given by the Prophet (pbuh) to others over his own safety is seen in his being closer to the enemy in battle as compared to other people, so much so that they used to fall behind him. It is sacrifice that can be referred to the capacity to bear great hardships for others. The public aspect of the interest of being ahead of others in battle is obvious, for he was like a shield for Muslims. In the story of Abū Ṭalḥa, it is seen that he was saving with his own body someone whose survival had a public significance due to the interests of religion and its followers; this was the Messenger of Allāh (pbuh). His absence would have given rise to a public injury for the religion and its followers. Abū al-Ḥasan Nūrī also inclined towards this when he came up to al-Sayyāf and said, in a well-known story, “I will sacrifice my companions for a moment of your life.”

If the matter pertains to the Hereafter, like acts of binding worship imposed universally, as well as binding prohibitions that have to be avoided individually, then the person undertaking the securing of these interests will either face the disturbance of these religious obligations and prohibitions or he will not face it.

If disturbance is caused, he is not to undertake it where the disturbance is not due to negligence, because religious interests in general have priority over the interests of this world. I do not think that this type actually occurs, as unbearable harm and obligation to do the impossible stand eliminated. Such conflict does not occur in human practices.

If there is no disturbance, but a defect appears that is counted as making the act less than perfect, then this is from the perspective of recommendations, and recommendations do not conflict with obligations, as in the case of thoughts occurring during such a public act that affect the heart and create a conflict, so that the ruling is issued through the heart and is examined through predominant feelings. Something like this has been transmitted from ‘Umar ibn al-Khaṭṭāb (God be pleased with him), when he thought about the preparation of the army while in a state of prayer. In the same spirit is the saying of the Prophet (pbuh), “When I hear a child crying, I shorten my prayer.”⁹⁹

If no disturbance is caused nor does a defect occur but is expected, then it moves to the category of injuries to be encountered and obstacles that he will face. Should this then be counted as an injury that is likely to occur in a matter of religion? It is like a scholar avoiding people out of fear of being seen of men, or fear of vanity and being treated as a leader. The same applies to a just sultan or a governor who is eligible for these functions, or a fighter who avoids *jihād* out of fear of getting involved in worldly gains or praise. This type of relinquishment leads to disturbance in these matters of public interest. The opinion that considers the preference of public matters here is to be upheld, because there is no way at all of suspending the interests of the public. The securing of the interests of religion and of this world cannot be attained without this, and we have assumed that this person who has such fears is required to secure them. Thus, there is no possibility other than securing them in a manner that does not invoke the obligation to do the impossible or severe hardship. The facing of ordeals and sins refers exclusively to the pursuit of personal whims, especially in the case of prohibitions, because they require mere relinquishment, and relinquishment does not conflict with positive acts in the securing of interests. Positive acts are binding on him only through obligations, and these are few; therefore, the band of precaution cannot be loosened from around his neck. If, however, he is not able to attain them without resorting to some kind of disobedience, then this cannot become an excuse (for giving up the act) because it is a matter that has been imposed on him in his personal capacity and mere pursuit of whims cannot remove this liability, for it does not belong to the categories of hardship. For example, if prayer, *jihād* or *zakāt* have become obligatory for him as a universal obligation, the obligation cannot be removed for fear that it will lead to being seen of men or fear of appearing vain. There are other similar examples. This applies even if it is assumed that he has fallen into that state; in fact, he is commanded to wage an inner struggle against all these states.

Suppose it is said: How can this be? It is known that he cannot be safe from such things; therefore, he becomes like a person causing his own destruction. The meaning then must be that there is no way for him to undertake things that lead to his own destruction.

The response is that if this had been so – where securing these public matters is assigned to him – it would be permitted to him even in cases where universal obligations have been imposed on him. This is a nullity by agreement. Yes, it is sometimes said: If his undertaking this leads to another evil, injustice, usurpation or transgression then this is something external to the issue. This will be a cause for his dismissal from office due to the absence of moral probability, and not due to the reason that the obligations are waived for him due to his apprehensions. The conclusion in this is that he has committed an opposition that demolishes his moral probity; therefore, his act of securing public interests is not valid while he is in such a state.

If it is assumed that not undertaking the act does not demolish a public interest, due to the existence of another person who will secure them, then this is subject to examination. It may be inclined towards safety from obstacles and at other times towards the securing of the public interest. A distinction may also be drawn between a factor, whose presence and absence are the same thus leading to uncertainty of demand, and between the situation of a person who has the power and security to secure the interest – even though another may have such security too – thus making the preferring or making the demand certain. The rule in such cases is always the striking of a balance between the interest to be secured and the injury to be repelled. What is preferred comes to dominate, but when the two are equal an ambiguity ensues leading to a standing disagreement between the jurists on the issue, as to whether the elimination of the interest due to an injury necessarily implies the preference of the interest or they remain equal.

Sub-Issue: Repelling Injury with Accompanying Utility

On occasions an injury is eliminated on account of the enormity of the interest to be secured. In such a case, it is necessary to prefer the interest over it. For this an actual incident serves as an illustration:

ʿIyāḍ has related in *al-Madārik* that ʿAdud al-Dawla Fanā Khusraw al-Daylamī invited Abū Bakr ibn Mujāhid and al-Qāḍī ibn al-Ṭīb to attend his court for a debate with the Muʿtazila. When his letter reached them, al-Shaykh ibn Mujāhid, and some of his companions, said, “These are a disbelieving and disobedient people – because al-Daylam were Rawāfiḍ – and it is not permitted to us to participate in their meeting. The King too has no purpose other than to hear that his conference was attended by all the learned men. Had it been solely for the sake of Allāh, I would have gone to attend it.” Al-Qāḍī ibn al-Ṭīb mentions that he said to them, “This is what al-Muḥāsibī, others and their contemporaries said, ‘Al-Maʿmūn is a *fāsiq* so do not attend his conference.’ This led to the dragging of Aḥmad ibn Ḥanbal to Ṭarasūs and then what happened is known. Had they participated in the debate, the authorities would have refrained from this act, and it would also have become evident what arguments they had against them. You too, O Shaykh, are treading on their path, which will lead to the same treatment for the jurists that was meted out to Aḥmad. They uphold the creation of the Qurʾān and negate seeing God. Here, I am going even if you do not.” The Shaykh said, “If Allāh has opened your heart to this, then do go”, and so on up to the end of the story. If this type of incident occurs then the aspect of the wider public interest is to be preferred by eliminating the particular injuries, as they are not to be acknowledged. These are types of particular injuries that are to be measured against the universal, thus eliminating all injury. The elaboration of this type has preceded in the earlier part of this book. Praise be to Allāh.

The Eighth Issue: When Interests Are Known

When the intention behind the interest secured by obligations is known, then the subject falls into three situations while securing them:

First: that he intends what he has understood about the intention of the Lawgiver in legislating the obligation. There is no ambiguity about this, however, it should not be devoid of the intention of ritual obedience as a matter of necessity, because the interests of the servants have been laid down by way of ritual obedience and are not rational. It has already been determined at its proper occasion that these interests are subservient to the (larger) purpose of ritual obedience. When it is taken into account the realization of the element of worship becomes highly imminent and it moves away from being adopted as mere practice for the subject. How many are there who have understood the underlying interest but have not turned to the other aspect, thus remaining oblivious of the true command of the Lawgiver? This is negligence that causes a loss of many blessings as compared to the situation in which ritual obedience is not neglected.

Further, the interests do not provide an evidence of their being confined to what is apparent, except for the textual evidence that indicates this. When the modes of discovering the *‘illa* from the text are examined, it is rarely found stated in the speech of the Lawgiver, for example, that “I have not legislated this *hukm* except for this underlying rationale.” Thus, if such confinement is not established, or it is established on occasions but is not continuous, the intending of this rationale perhaps annuls what is also the purpose of legislating the rule, for it falls short of the perfection found in others.

Second: that he intends what he hopes to be the intention of the Lawgiver, whether or not he has come to discover it. This is more perfect than the previous situation, except that he may sometimes lose sight of the aspect of ritual obedience, when the true intention lies in ritual obedience. Where a person knows that a certain act has been legislated for such-and-such interest, and then acts on the basis of this intention, he is undertaking the act with the intention of securing the interest, but being unaware of the element of obedience in the command he resembles a person who undertakes the act without the command having been laid down. The act of the person who acts in this manner is that of one acting in the usual way, which is devoid of ritual obedience. At times, the Devil may seek him out and insert the intention of attaining nearness to creation, being known among them, or inclination towards a worldly matter or other intentions that are associated with compensation. At other times, he acts purely for his own gain, and in this case his reward does not attain the perfection that it does in the case of ritual obedience.

Third: that he merely intends obedience to the command, whether or not he has understood the intention behind the securing of the interest. This is perfect and secure as compared to the other states.

As for its being perfect, it is because he has appointed himself as a complying servant and responding slave, for he does not take into account anything other than the command. Further, when he gave obedience to the command he delegated the knowledge of the interest to be secured to One who has it knowledge as a whole and in detail. His act does not fall short of some interests and not others, because Allāh knows about all interests that arise from this act. He complies in his response without qualifying it with some interests while excluding others.

As for being secure, the reason is that one acting in obedience is acting according to what is required by worship standing at the core of service. If an intention other than that of Allāh is offered to him, he turns it towards ritual obedience; in fact, such an intention does not occur to him at all for he acts as if he was an owned slave who does not possess the ability for anything himself. This is different from acting for the acquisition of interests. In such a situation he deems himself a link between the servants and their interests, even though he is such a link for himself too, due to which he may undertake the act for himself. Further, his own benefit here is erased from his side on account of abiding by the requirements of the command and prohibition. Acting on the basis of benefits is the path towards the invoking of internal desires, and relinquishing them in acts is the path to being absolved of their burdens. All this was made plain in the *Book of Aḥkām*. All success comes from Allāh.

The Ninth Issue: Absence of Choice in the Case of the Right of Allāh

The subject has no choice in matters that pertain to the rights of Allāh, but he does have a choice in matters that are rights of the individual alone.

There are many evidences to the effect that the rights of Allāh cannot be waived and they do not depend upon the choice of the individual. The foremost of these is induction through the sources and the bases of the *sharīʿa*, like purification in its different forms, prayer, *zakāt*, fasting, pilgrimage, commanding the good and forbidding evil – out of which *jihād*¹⁰⁰ is at the highest level – the forms of expiation related to these, *muʿāmalāt*, eating, drinking as well as other forms of worship and human practices in which the right of Allāh or the right of other than the individual is established. Offences, all of them, are also measured by the same standard – that is, the right of Allāh present in them cannot be waived. If someone wishes to waive purification for prayer, whichever form of purification it is, or a prayer out of the obligatory prayers, or *zakāt*, or pilgrimage, or some other prescribed act, then he does not have the right to do so. He will continue to remain liable for it, always, until he shakes off the liability (through performance). Likewise if he attempts to make lawful some consumable animal without slaughter, permits something out of these that the Lawgiver has prohibited, he permits

marriage without a *wali* (guardian) or without dower, or permits *ribā* (interest) or the remaining void sales, waives the *ḥadd* penalty for *zinā* (unlawful sex), *khamr* (wine) or brigandage, or the imposition of a penalty on another by a mere claim, along with other similar things. Not one of these will be valid. This is evident throughout the entire corpus of the law, so much so that if the rule involves the right of Allāh as well as the right of the individual, the individual does not have the right to waive his claim if it leads to waiving the right of Allāh.

It is for this reason that this is not contradicted by saying, for example, that the right of the individual is available to him for his life, perfection of his body, reason and the preservation of his wealth, and that he possesses this right, thus, if he relinquishes it by delivering it to another, then this may either be considered lawful or it may not. If you say “no”, then it is *fiqh* that is defective in its basis, because it is his right. If he relinquishes it, then what has preceded requires that he has a choice in relinquishing it, but *fiqh* requires that he does not have a right to do so. If you say “yes”, it will go against the *sharīʿa*, because no one has the right to kill himself, nor to eliminate one of his limbs, nor part of his wealth. Allāh, the Exalted, has said, “Nor kill (or destroy) yourselves: for verily Allāh hath been to you Most Merciful!”¹⁰¹ and then gave a warning, “And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people’s property.”¹⁰² A strict warning was laid down for one who kills himself. He also forbade the drinking of wine in so far as there is the momentary loss of the interest of preserving reason; then what can be said about loss that is permanent. He placed interdiction on one who wastes wealth, while the Messenger of Allāh (pbuh) prohibited the wasting of wealth.¹⁰³ All this is evidence for the fact that in all that is the right of the individual it is not necessary that he have a choice (of relinquishment).

The reason is that we will say: The preservation of life, and perfection of reason and body, are the rights of Allāh; these are not the rights of the individual. Rights like these have not been left to their discretion, which is evidence of the fact. If Allāh, the Exalted, has perfected man’s life, body and reason, by means of which he meets the obligations imposed on him, then it is not permitted to the servant to relinquish these rights.

The exception, of course, is where the subject becomes involved with respect to these things in some kind of trial without any effort or causation on his part, and as a result of this he loses life, reason or a limb. In such a case, it becomes a pure right of the individual. If it is affected by something that cannot be removed, then he has a right against one who has transgressed against him, because it is now like a right that has to be claimed from another like a debt by the creditor. If he likes he may claim it and if he likes he may relinquish it. Relinquishing it is better from the perspective of the universal. Allāh, the Exalted, has said, “But indeed if any show patience and forgive, that

would truly be an affair of great resolution”¹⁰⁴ and “The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, his reward is due from Allāh: for (Allāh) loveth not those who do wrong.”¹⁰⁵ The reason is that retaliation and blood-money are means of restoration for what the victim has lost with respect to his person or body. The right of Allāh has been lost and it cannot be restored. Likewise those incidents whose effect can be removed as in illness where medication is not obligatory just as defying the unjust is not obligatory in certain cases, as is mentioned in the details of *fiqh*. As for wealth, it has a different method of treatment: if the right of the individual has been determined then he has the right to relinquish it. Allāh, the Exalted, has said, “If the debtor is in a difficulty, grant him time until it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.”¹⁰⁶ This is distinguished from the situation where the wealth is in his possession and he wishes to transact in it and destroy it for a purpose that is not permitted by the Lawgiver, then in this case he is not allowed to do so. The same applies to all that falls in this category. As for the prohibition of the permitted and the permission of the prohibited along with similar things, they belong to the right of Allāh, because it is the first legislation and initiation of the legal universal that is made binding for the servants; therefore, they do not have discretion in this. The basis is that human reason does not have the ability to judge good and evil by means of which it can permit or prohibit. It amounts to mere transgression in an area in which someone other than Allāh has no part. Consequently, no one has a right to exercise a choice in this.

Suppose it is said: It has preceded that each right of an individual necessarily has an element of the right of Allāh in it; therefore, there is no right of an individual that does not have the right of Allāh mixed with it. This requires that the individual does not have a right to waive it. After this determination, there is no right in which the individual can have a choice. The category of the individual thus disappears and only a single category remains.

The response is that this single category has further divisions. The reason is that what has been established as the right of the individual has been assigned this feature by the law, and not because the individual originally had this right. This statement has preceded and has been made plain in this book.¹⁰⁷ If this is the case, then a right is established for the individual and Allāh too has a right.

As for the right that is purely for Allāh,¹⁰⁸ the individual has no role in it. With respect to the right of the individual, the individual has a choice in it to the extent that is determined for him by Allāh, and not in the meaning that he has an independent choice in it. It has become apparent in what has recently been shown that the individual has a choice in something that is his right as a whole. It is sufficient to understand that the individual has a right in things acquired, consumed (food and drink), clothing and other things that

are permitted for him. He also has a right in the case of different kinds of trade, transactions and claims based on rights. He therefore has the authority to relinquish them, receive compensation and undertake transactions in them without any interdiction placed on him, when his transactions are based on the known good practices. The distinction between what is the right of Allāh and what is the right of the individual rests entirely on the indication provided at the end of the third category in this book. Praise be to Allāh.

The Tenth Issue: The Meaning of *Hiyal* (Legal Fictions)

Adoption of *hiyal* (legal fictions or devices) in an apparently compatible form is legal. They may become incompatible with the dropping of the rule or conversion of the rule into something else. In such a case, they are undertaken to serve a particular purpose with the knowledge that the purpose is not lawful for the person doing so, and they can only be dropped or converted through a link with such a purpose. It is as if the adoption of legal devices is based upon two premises. The first is the apparent conversion of the rules of conduct into other rules. Second, deeming the acts intended by these devices as a support or means to attain the rules. Is such an intention valid, and are the acts compatible with the *sharī'a*?

It is a subject that deserves special attention, but prior to an examination of its validity or otherwise it is necessary to provide an elaboration of the adoption of these legal devices.

Allāh has made certain things obligatory and prohibited others, either in the absolute sense without any qualification or by particular ordering of the cause. For example, he has made prayer, fasting, pilgrimage and other similar things obligatory, while he has prohibited unlawful sex, *ribā* (interest), murder and so on. He has also prohibited things that become consequences of causes, and He has prohibited other things in the same way. These are like the obligation of *zakāt*, expiation, fulfilling of vows, pre-emption for a joint owner, and the prohibition of a divorced woman (in her waiting period), usurped or stolen property as well as other things. If the subject causes the waiving of this obligation for himself, or causes the permission of a prohibited thing for himself, by way of a certain form of causation that results in the conversion of an obligation into a non-obligation on the surface, or it results in the conversion of a prohibition into a non-prohibition, then this causation is called a *hila*, or the adoption of legal fictions.

For example, when the time of prayer catches up with him and he is under an obligation to offer four *rak'as*, but the subject intending to cause the discharge of all four either drinks wine or takes a medicine causing slumber until such time that the prescribed timing of prayer is over while he is in a state of inebriation like one who has fainted. In the alternative, he may take up a journey for the sake of shortening the prayer. Likewise, a person may

travel during the entire month of Ramaḍān so that he can continue eating, or he may possess wealth sufficient to perform the pilgrimage, but he gifts it away or causes its loss in some way so that the obligation of pilgrimage stands waived. A person may wish to have sex with another person's slave girl so he abducts her with the other person thinking that she has died and he imposes compensation on the abductor, who then has sex with her. A person may adduce false evidence about marriage with a virgin through her consent, which the court upholds and he then has sex with her. He may intend the sale of ten *dirhams* paid promptly for twenty to be paid with a delay. To achieve this he treats the ten as price for a dress, then sells back the dress to the first seller for twenty to be paid after a delay. He intends to kill someone, so he places in his path a lethal instrument like a spear at a certain point or digs a pit and so on. He may wish to evade *zakāt* by gifting it to someone, or spending or gathering different categories into one or splitting it into different categories.

The same applies to all other examples that make the prohibited lawful or cancel the obligation. Similar examples abound for the prohibition of the permitted, like a wife breastfeeding the slave girl of the husband or another woman he is to marry, so that she becomes prohibited for the husband. The subject may also try to establish something that is not established, like making a bequest for an heir by converting it into an acknowledgement of a debt. On the whole, these are legal devices for converting established rules into other rules, whether the rules are obligation-creating or declaratory, through an act that apparently has legal validity, but is morally unsound.

The Eleventh Issue: Legal Fictions Are Unlawful

Legal fictions, as described above, are unlawful as a whole. The evidences for this from the Book and the *Sunna* are beyond reckoning. In particular cases, however, the collective meaning conveys their prevention, and the prohibition is definitive.

From the Book: The description of the hypocrites in the words of the Exalted, "Of the people there are some who say: 'We believe in Allāh and the Last Day'; but they do not (really) believe. Fain would they deceive Allāh and those who believe, but they only deceive themselves, and realize (it) not! In their hearts is a disease; and Allāh has increased their disease: And grievous is the penalty they (incur), because they are false (to themselves). When it is said to them: 'Make not mischief on the earth', they say: 'Why, we only want to make peace!' Of a surety, they are the ones who make mischief, but they realize (it) not. When it is said to them: 'Believe as the others believe': They say: 'Shall we believe as the fools believe?' Nay, of a surety they are the fools, but they do not know."¹⁰⁹ The Almighty considered them blameworthy, warned them and reprimanded them. The reality of their affair is that they professed Islam only to save their lives and their wealth, and they did not

intend to submit to the *shari‘a* in obedience while voluntarily affirming with their heart. It is due to this that they have been condemned to be in the deepest level of the fire. It is said about them that they intended to deceive Allāh and those who believe. They said about themselves, “When they meet those who believe, they say: ‘We believe’; but when they are alone with their evil ones, they say: ‘We are really with you: We (were) only jesting.’”¹¹⁰ This is because they wore the clothing of the religion and of the believers as a fiction to serve their false objectives. Allāh has said of those who wish to be seen of men through their actions, “O ye who believe! Cancel not your charity by reminders of your generosity or by injury – like those who spend their wealth to be seen of men, but believe neither in Allāh nor in the Last Day. They are in parable like a hard, barren rock, on which is a little soil: on it falls heavy rain, which leaves it (just) a bare stone. They will be able to do nothing with aught they have earned. And Allāh guideth not those who reject faith.”¹¹¹ He also said, “Not those who spend of their substance, to be seen of men, but have no faith in Allāh and the Last Day: If any take the Satan for their intimate, what a dreadful intimate he is!”¹¹² “The hypocrites – they think they are over-reaching Allāh, but He will over-reach them: When they stand up to prayer, they stand without earnestness, to be seen of men, but little do they hold Allāh in remembrance.”¹¹³ He blamed them and warned them, because it is a professing for worldly purposes and they hope to attain the world through it. About the residents of the heaven, Allāh has said, “Verily We have tried them as We tried the people of the garden, when they resolved to gather the fruits of the (garden) in the morning, but made no reservation (‘If it be Allāh’s Will’). Then there came on the (garden) a visitation from thy Lord (which swept away) all around, while they were asleep. So the (garden) became, by the morning, like a dark and desolate spot (whose fruit had been gathered).”¹¹⁴ This is when they used a device to retain the right of the poor by deciding to harvest the fruit at a time different from the one at which the poor used to come for their right. Allāh punished them by destroying what they possessed. He further said, “And well ye knew those among you who transgressed in the matter of the Sabbath: We said to them: ‘Be ye apes, despised and rejected.’ So We made it an example to their own time and to their posterity, and a lesson to those who fear Allāh.”¹¹⁵ There are other evidences like these as well. The reason is that created a fiction for hunting on the Sabbath in a manner that was similar to the other days for hunting. Allāh, Exalted, has said, “When ye divorce women, and they (are about to) fulfil the term of their (*‘idda*), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; he wrongs his own soul. Do not treat Allāh’s Signs as a jest, but solemnly rehearse Allāh’s favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allāh, and know that Allāh is well acquainted with

all things.”¹¹⁶ He elaborated that Allāh has prohibited a man from taking back his wife (after divorce) just to harm her – that is, by divorcing her then leaving her alone and when the waiting period is about to end taking her back, divorcing her again and taking her back towards the end of the period. Thus, his intention is only to give her torment. Allāh has said, “Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allāh Hath created in their wombs, if they have faith in Allāh and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allāh is Exalted in Power, Wise. A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness.”¹¹⁷ Divorce, prior to Islam, was not fixed by number, and a man could take back his wife before the termination of the waiting period. He used to divorce her again and repeat the process. It was for this reason that the words, “A divorce is only permissible twice.”¹¹⁸ Along with this were the words, “It is not lawful for you (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allāh.”¹¹⁹ These were about the person who used to torment the wife until she was able to ransom herself from him. All these are legal fictions to attain an objective for which the rules of the law have not been laid down. Likewise, Allāh has said, “After payment of legacies and debts; without causing loss to anyone”¹²⁰ – that is, loss to the heirs by making a bequest for more than a third of the property or making a bequest for an heir as a device to deprive some of the heirs. Allāh has said, “Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up”¹²¹ and “Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them”,¹²² along with other verses that convey the same meaning.

From the *Sunna*: first are the words of the Prophet (pbuh), “Differing types of wealth are not to be combined nor similar types to be separated for fear of the imposition of *ṣadaqa* (*zakāt*).”¹²³ This is a prohibition against the device of evading an obligation or reducing it. He (pbuh) said, “Do not do what the Jews and the Christians have done; they permitted the prohibitions of Allāh through trivial fictions”¹²⁴ and he said, “One who releases a horse among two horses knowing well that it will outrace the rest, then this is gambling.”¹²⁵ He (pbuh) said, “May Allāh destroy the Jews. The fat of carcasses was prohibited for them, but they mixed it up with other fat, selling it and consuming the price.”¹²⁶ He (pbuh) said, “Some of the people from my Umma will definitely drink wine and give it another name. They will be bearing musical instruments and will be followed by dancing girls. Allāh will make them sink into the earth and will turn some of them into apes

and swine.”¹²⁷ It is related from Ibn ‘Abbās (God be pleased with him) as a *mawqūf* and *marfū‘* tradition that “a time will come over people when five things will become permitted under the name of five things: they will permit the drinking of wine under names they will assign to it; ill-gotten wealth under the name of gift; murder under the name of (apprehension of) terror; unlawful sexual intercourse under the name of marriage; and the charging of *ribā* under the name of trade.”¹²⁸ He (pbuh) said, “When the people start accumulating *dinārs* and *dirhams*, they indulge in buy-back agreements (*bay‘ al-‘īna*); they follow the tails of cows; and they give up *jihād* in the way of Allāh; Allāh will cause a great trial to descend upon them, and He will not lift it until they (sincerely) return to their religion.”¹²⁹ He (pbuh) said, “The curse of Allāh is on one who facilitates *ḥalāla* and the one who seeks it”¹³⁰ and “The curse of Allāh on the one who takes a bribe and one who gives it.”¹³¹ He forbade the giving of gifts to creditors, and said, “If one of you gives a loan and a gift is given to him or a ride is provided, he should not accept the ride or accept the gift, unless that practice was prevalent between them prior to this.”¹³² He (pbuh) said, “A murderer will not inherit”¹³³ he deemed the receiving of gifts by rulers as purloining,¹³⁴ and prohibited the combining of sale with a loan.¹³⁵ ‘Ā’isha (God be pleased with her) said, “Convey it to Zayd ibn Arqam that his *jihād* alongside the Messenger of Allāh (pbuh) stands annulled if he does not repent.”¹³⁶ There are many traditions that convey this idea through their apparent meanings, and most of them focus on the fact that legal fictions and the conversion of rules in this way is not permitted.

The majority of the Umma from among the Companions and Followers (God be pleased with them all) uphold this.

The Twelfth Issue: Acts Considered in the Light of the *Maṣāliḥ*

As it is established that the rules are legislated for the interests (*maṣāliḥ*) of the servants, all acts will be considered in the light of this fact, because this is the objective of the Lawgiver with respect to acts, as has been elaborated. Thus, there is no ambiguity when a matter is in conformity with this legal basis both in its outward and internal manifestation. If the apparent act is compatible, but the interest is opposed to it, then the act is not valid and is unlawful, because legal acts are not intended for their own sake; rather what is intended thereby are other matters which are their content, and these are the interests for which they have been prescribed. An act undertaken in a form that is different from this is not in conformity with the lawful forms.

We are aware that the two *shahādas* (pronouncements), prayer and other acts of worship are legislated to attain nearness to Allāh through them, and to have recourse to Him, to proclaim His glory and majesty, and to direct the heart and limbs towards obedience and submission. If the act is performed

with the intention of acquiring benefits of this world, whether by repelling or through profit, then this does not belong to the category of the lawful at all, because the interest for which it has been prescribed has not been attained; rather the objective is the very opposite of this interest. This is like a person pronouncing the *shahāda* with the intention of protecting his life and property and nothing else, or a person praying with the intention of being seen of men so that he be praised for doing so or that he attain a high status in this world.

In the light of this, we may mention *zakāt*, for example. The purpose behind its legislation is to eliminate the meanness of greed and to secure the interest of compassion for the poor, and the revival of life that is facing extinction. Thus, whoever gifts away his wealth at the end of the one-year period seeking to evade the obligation of *zakāt*, and then when he is in the next one-year period or even prior to it, seeks it back by way of gift, then this act is meant to strengthen the trait of stinginess and even to extend it, and it eliminates the interest of compassion for the poor. It becomes known that this form of gift is not the form that has been recommended by the *sharīʿa*. The reason is that gift is compassion for and a favour to the donee by creating ease for him, whether he is rich or poor. It is also the affirmation of the bond of affection and mutual support. The form of gift contemplated here is the very opposite of the true form. Had it been the actual transfer of ownership, which is lawful, it would have been compatible with the interest of compassion and the creation of ease as well as the elimination of the meanness of covetousness. In such a case, it would not amount to the evasion of the payment of *zakāt*. Ponder over the fact¹³⁷ that a lawful intention in the commission of an act does not demolish the intention required by the *sharīʿa*, while an unlawful intention demolishes the intention required by the *sharīʿa*.¹³⁸

Another example is that of the ransom legislated for the wife to seek release when they cannot maintain the limits (*hudūd*) prescribed by Allāh for their state of marriage. It is permitted to the wife to purchase her independence (denial of physical access to her) from the husband of her own good will, when she fears falling into acts that are prohibited. She spends her wealth seeking the mending of affairs between her and her husband, which is release through a favour. This is the intention of the law that is compatible with the interest to be secured; there is no irregularity in this either of the relationship or of wealth. If he now causes harm to her so that she may seek release through ransom, then his act is unlawful for he is harming her without cause, especially when he has the ability to attain separation without causing harm.¹³⁹ This type of release, when she is forced to offer ransom, will not be release through good will; nor will it be release out of fear that the limits prescribed by Allāh cannot be maintained, for it will be ransom under duress, even if it is valid for her to seek it under duress and to avoid the injury being caused. The matter becomes unlawful for him if he gives it a form that is unlawful.

In the same context, we say: The *aḥkām* (rules) of the *sharīʿa* are composed of the universal interest taken as a whole, and specific interests of each issue in particular. As for the specific interests, these are expressed specifically by each evidence of a rule. As for the universal interests, they imply that each subject (individual) is covered by a determined law of legal obligations with respect to all his acts, statements and beliefs. Thus, he is not to be like an unrestrained animal acting according to its whims, and he is to be controlled by the rein of the *sharīʿa*. The elaboration of all this has been provided in what has preceded. If the subject begins to seek exemptions of the school in each issue faced by him, and follows each opinion that conforms to his desires, then he has cast away the noose of piety, has gone far in the pursuit of his whims, has negated what the Lawgiver affirmed, and has relegated what He advanced. The examples of all this are many.

Sub-Issue: Three Kinds of Legal Fiction

If this is established, then the fictions that have been nullified, condemned, and deemed forbidden in what has preceded, are those that demolish a fundamental of the *sharīʿa* and negate a legal interest (*maṣlaḥa sharʿiyya*). If we assume that a fiction does not demolish a fundamental of the *sharīʿa* nor does it negate a legal interest that has been acknowledged by the law, then it is not covered by the prohibition nor is it nullified. The reliance of the issue is on the fact the fictions are of three kinds:

First: those about whose nullity there is no disagreement, like the fictions employed by the hypocrites and those who merely wished to be seen as Muslims.

Second: those about the legal validity of which there is no disagreement. These are like the pronouncement of disbelief under coercion. The relationship of the adoption of a fiction to the saving of life as a primary intention without a belief in what it requires is the same as the relationship of a fiction pronouncing conversion to Islam to the preservation of life as a primary intention. It is, however, permitted for it carries within it worldly interest and there is no injury in it at all, either in this world or in the Hereafter. This is distinguished from the first as it is not permitted due to an injury with respect to the Hereafter in the absolute sense. The interest and injuries that pertain to the Hereafter have priority in comparison with the interests and injuries of this world, by agreement. Giving preference to a worldly interest by overriding an interest of the Hereafter is not valid. It is known that what is overridden by the interests of the Hereafter is not compatible with the purposes of the Lawgiver; therefore, it is a nullity. It is in this context that the condemnation of hypocrisy and those who profess it was laid down. The same applies to all other acts resembling them. Both kinds reach the level of the definitive.

Third: these are the subject matter of ambiguity and confusion, and the views of the researchers have become perturbed, because they could not elaborate a clear and definitive evidence that links them to the first kind or to the second. They could not elaborate an underlying purpose for them that conformed to the purpose of the Lawgiver nor could they bring up anything that goes against the interest that has been laid down by the *shariʿa* in accordance with the issue assumed for it. This kind, therefore, became disputed from this perspective. It was argued by the disputants that as there is nothing against the interest to be secured, the adoption of the fiction is permitted. Those who argued against this said that the adoption of the fiction is forbidden. It is not valid to say that the person who permitted the adoption of the fiction in certain issues acknowledged that such adoption went against the intention of the Lawgiver. In fact, he permitted it on the basis of the examination of the interest, maintaining that his issue is linked to the category of fictions that are permitted in which the intention of the Lawgiver is known. The reason is that openly clashing with the Lawgiver, with certainty or probable conviction, is an act not undertaken even by the ordinary Muslims and it cannot be conceived in the case of the foremost leaders and the scholars of religion, may Allāh make us benefit from them. Likewise those who forbade it, did so on the basis that it went against the intention of the Lawgiver and the interest He has laid down for the *aḥkām*. It is necessary to elaborate this in a general way through some examples so that the validity of this position is made evident. All success is through Allāh.

Among these is the marriage of the *muḥallil* (one who facilitates remarriage to a prior husband). He adopted a fiction to make the divorced wife return to the first divorcer, which conforms in its apparent meaning with the words of the Exalted, “So if a husband divorces his wife (irrevocably), he cannot, after that, re-marry her until after she has married another husband and he has divorced her.”¹⁴⁰ The woman then marries this *muḥallil*, and her returning to the first after divorce from the second would be compatible. The texts of the Lawgiver are to be understood in the light of His purposes; rather these are the first source from which the *maqāsid al-shariʿa* (purposes of the *shariʿa*) are themselves understood. A tradition from the Prophet (pbuh) says, “No, until you taste his sweetness and he tastes your sweetness”, is clear in saying that the purpose of the second marriage is the tasting of sweetness, and this has been attained in the case of the *muḥallil*. Had the intention of adopting the fiction been acknowledged in the invalidity of such a marriage, the Prophet (pbuh) would have elaborated it, because its being a fiction does not forbid it, otherwise this would have become necessary in each fiction, as in the pronouncement of disbelief under coercion along with all fictions that are covered by the permitted kind by agreement. If this is established and it conforms with the transmitted text, the indication is that it is valid and conforms with the intention of the Lawgiver.

The same applies when the aspect of interest is acknowledged. The interest underlying this marriage is obvious, because He has intended the mending of affairs between the spouses, for it will become a basis for true compatibility between them. Further, the intention behind the contract of marriage is not binding perpetuity, because it is a pressure that the *shariʿa* denies, and it was for such a pressure that divorce has been legislated, unlike the marriage contract of the Christians (Catholics). The jurists have permitted marriage to fulfil the requirement of an oath without there being an inclination to perpetuate the protection provided to the woman. Some jurists also permitted the marriage of a traveller to a land where his intention is to reside for a certain period, and so on.

In addition to this, it is not necessary that a universal principle be legislated for an interest and that the interest be realized in each particular case falling under it, as has preceded, as in the case of marriage to satisfy the requirements of a vow. It also applies in the case of a person saying, “If I marry such and such woman, she stands divorced.” This is according to the opinion of Mālik in both cases and in the case of the marriage of the migrant, as well as others.

This is the determination in part of those who seek to validate the adoption of fictions here. As for the determination of the evidence for forbidding fictions, it is obvious, and we will not prolong the discussion by mentioning it. The most appropriate statement about it is what ‘Abd al-Wahhāb has said in *al-Risāla*, so have recourse to it.

Among these are the issues of sales with a delay (credit sales). In these, the fictions adopted are to sell a *dirham* spot for two *dirhams* with a delay, but through two contracts with each contract having its own purpose. If the first is a means then the second is not prohibited, because the Lawgiver has permitted to us the utilization of the seeking of interests and the repelling of harm in specific forms; therefore, the examination by the subject of these avenues is not objectionable, otherwise the objection can be raised against all the lawful avenues. If it is assumed that the first contract is not the purpose of the contracting party and his objective lies in the second contract, then the first contract becomes a means to an end. Means are intended in the law in so far as they are means, and this contract is one of them. If means are permitted in so far as they are means then what we are concerned with is also permitted. If what we are concerned with is not permitted then all means should be prohibited without qualification, but they are not prohibited in the absolute sense – that is, not without evidence. Likewise in this case: it should not be prohibited without an evidence.

In fact, what we have here indicates the validity of means for our issue and it also indicates the validity of the intention of the Lawgiver in this case, as in the words of the Prophet (pbuh), “Sell the mixed dates for *dirhams*, and then buy the high quality dates with the *dirhams*.”¹⁴¹ The intention behind the sale of mixed quality for *dirhams* was to find a means for obtaining the high quality

dates, but in a manner that was considered permissible. There is no distinction here in the intention between the obtaining of dates through one party to the contract or two parties, because the Prophet (pbuh) did not specify this.

The objector may say: The statement that this is based on the principle of blocking of the lawful means (*dharāʾiʿ*) is not beneficial here. *Dharāʾiʿ* (means) are of three types. Among these are those that are blocked by agreement, like hurling abuses at idols with the knowledge that it will lead to the hurling of abuses against Allāh; the hurling of abuses against the parents of a person, as it will lead to the hurling of abuses against the parents of the person doing so in the first place – and such a person has been considered to abuse his own parents in the tradition; the digging of a pit in the path of the Muslims with the knowledge that they will fall into it; and the putting of poison in food and beverages about which it is known that they will be consumed by Muslims. Among these are those that are not blocked by agreement, like a person wishing to buy better wheat with his wheat or one that is of a lower quality. He enters into the fiction of selling his wheat for a price with which he attains his objective; rather, it is like all kinds of trade for their permissible purpose is to spend *dirhams* for goods to attain more than those spent. Among these are those that are disputed. Our issue belongs to this last category. We have not been able to arrive at its rules as yet, and the dispute still remains.

All this is what can be said by way of legal reasoning about the permissibility of adopting fictions for the issue. The evidences from the other side are established, evident and well known, so review them at their proper occasion. The purpose here is to present this unique discussion, due to the inadequacy of awareness about it in the books of the jurists. The reason is that the books of the Ḥanafīs are non-existent in the lands of the West, and so also the books of the Shāfiʿīs and other schools. Along with this, reliance on a single school for legal reasoning will perhaps breed aversion and denial in a person for the other schools other than his own, without even being aware of their sources. This gives rise to hatred against the Imāms of the other schools, about whose merit and status in religion, and their awareness about the intention and purposes of the Lawgiver, all the people are agreed. This is found quite often. We deem these two examples to be sufficient, for these are the best known under the issues of *ḥiyal*. An analogy can be constructed from these for other transactions.

Sub-Issue: Concluding the Book of Maqāṣid

This kind includes a very large number of issues. In what has preceded, the sub-issues of the recognized issues have been discussed, and in what follows more sub-issues will be taken up. It is necessary, however, to end the *Book of Maqāṣid* by repeating the elaboration and identifying its total purpose, with the power of Allāh.

A person may say: The issues that have preceded in this book are based on the identification of the purposes of the Lawgiver. How does one identify what is the purpose of the Lawgiver and what is not?

The response is: The examination here is divisible into three rational types:

First: it may be said that the purpose of the Lawgiver is not visible to us unless there comes something (evidence) that identifies it for us. This cannot be done without an express statement that is separated from the pursuit of underlying meanings, which are required by induction but are not required by words and their literal forms. It may be accompanied by the view that the interests of the servants have not been taken into account, under any circumstances, in the imposition of obligations, or it may be accompanied by the view that denies the necessity of taking interests into account. Further, if it does occur in certain interpretations, it is not known to us in its complete meaning, or it is not known at all. This approach may be carried forward to the extent that it leads to the denial of the validity of *qiyās* (syllogism), which in turn is emphasized by what has been said about the condemnation of *raʿy* (legal reasoning) and *qiyās*. The conclusion for this interpretation is to construe things in the apparent (literal) meanings in the absolute sense. This is the view of the *Zāhiriyya*, who confine the location of knowledge to what is the purpose of the Lawgiver as expressed in literal forms, and to the texts. Perhaps, this will be indicated in the *Book of Qiyās*, God willing. The view that accepts this in the absolute meaning adopts an extreme view, but it is the testimony of the *sharīʿa* that it is not to be taken in this absolute sense.

Second: this approach takes the other extreme, except that it has two types. The first is the claim that the purposes of the *sharīʿa* are not to be found in the apparent literal meanings nor in what is understood from the meanings, rather the purpose is something else, beyond all this. This applies continuously throughout the *sharīʿa*, so that nothing remains that can be held on to or that can be turned to for the identification of the purposes of the Lawgiver. This is the view of every person who intends to reduce the *sharīʿa* to a nullity. This is the view of the *Bāṭiniyya*, for when they upheld the idea of the Maʿṣūm Imām it became impossible for them not to object to the texts and the apparent legal meanings of the texts so that they could turn to what they had imagined. The ultimate result of this view leads to disbelief, and we seek refuge with Allāh against this. It is better to turn away from this view and to move down to another that comes closer for comparison with the first approach. This is the second type, which says: The purpose of the Lawgiver is found by turning to the underlying meanings of words so that the literal meanings and texts are interpreted absolutely and only in the light of such meanings; if the text goes against the conceptual meaning it is to be cast aside and the conceptual meaning is to be advanced. This approach is either based on the obligation of the consideration of interest in the absolute sense, or on the non-obligation but giving predominance to the meaning to an extent that literal legal meanings

become subservient to the conceptual meanings. This is the view of those engrossed deeply in *qiyās*, who give preference to it over the texts. This is the other extreme as compared to the first type.

Third: the third approach is to say that both aspects be considered in a manner that does not do away with the underlying meaning through the literal approach to the text nor *vice versa*, so that the *sharīʿa* is implemented through a single system without conflict and contradiction. This is the method followed by most of the jurists who were grounded in the knowledge of the *sharīʿa*. It is this method that is relied upon for the rule of recognition that identifies the purpose of the Lawgiver. We, therefore, say, seeking success from Allāh, that it can be identified through several methods:

First method: The pure commands and prohibitions expressly stated and imposed primarily. It is known that a command is a command for requiring the undertaking of an act. The occurrence of the act when the command is found is the purpose of the Lawgiver. The same applies to the prohibition about which it is known that it requires the negation of an act or abstention from it. The absence of the act is the purpose of the Lawgiver, while its occurrence is the opposite of His purpose, just like the non-occurrence of an act commanded is in opposition to His purpose. This is an apparent and general method for one who takes only the commands and prohibitions into account without turning to the underlying cause (*ʿilla*), and it is also the approach of one who takes the underlying causes and interests into account, which is a fundamental of the law.

The description has been qualified with the word “primarily” to avoid the commands and prohibitions that intend secondary meanings too, like the words of the Exalted, “O ye who believe! When the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the remembrance of Allāh, and leave off business (and traffic): That is best for you if ye but knew!”¹⁴² Here the prohibition about sale is not the primary prohibition; rather, it is an emphasis for the commanded to hasten to the mosque. It is a prohibition through a secondary intention, thus, sale is not prohibited as a primary intention. It is the same as the prohibition about *ribā* and *zinā*, for example.¹⁴³ In fact, it is due to the obstruction it causes when one is occupied with it. In a text that is like this there is an examination and disagreement in understanding the intention of the Lawgiver through mere commands and proscriptions like the one that arose in the case of a basic issue that translates into “prayer in a usurped house.”

The words “expressly stated” are to exclude implied commands and prohibitions that are not expressly stated, like the prohibition of things implied by the opposite meaning of the command and the command implied by the prohibition of something. The reason is that the prohibition and commands, if upheld in such cases, whenever they are intended are intended through a secondary not a primary intention, because their application, according to

those who uphold such implications, is an application of emphasis for the command or prohibition that is expressly stated. If such a view is negated (not upheld) then the command evidently does not have such an intention. The same applies to things included in the act commanded because the command cannot be completed without them, which is mentioned under the issue with the title “things without which the obligation cannot be completed.” The indication of the purpose of the Lawgiver through the implications of the command and prohibition is something that is a matter of disagreement; therefore, it does not fall under what we are concerned with here. It is for this reason that the command and prohibition were qualified with the words “expressly stated.”

Second method: the second method takes into account the underlying causes of commands and prohibitions: Why has such an act been commanded? And why has another act been prohibited? The underlying cause is known or it is not known. If it is known it is followed – that is, when it is found the act required by the command or prohibition should be found, with or without intention, like marriage for promoting the interest of procreation, sale for promoting the interest of utilizing the sold commodity and *hudūd* for the interest of deterrence. The underlying cause is identified through the modes of discovering the underlying cause detailed in *uṣūl al-fiqh*. When it is determined, it comes to be known that the purpose of the Lawgiver is what is required by such underlying causes with respect to the commission or omission of the act and with respect to its causation or its absence.¹⁴⁴ If the underlying cause is not known then it is necessary to suspend judgement about saying that the Lawgiver definitely intended such and such. This suspension of judgement is examined in two ways:

First way: that we do not go beyond the act specified in the text as related to the determined rule or cause, because extension through lack of knowledge about the underlying cause is arbitrary and without any evidence; it is straying away from the path. A rule applied to Zayd is not valid when it is (only) applied to ‘Amr when we are not aware whether the Lawgiver intended the rule to be applied to Zayd. The reason is that if we do not know this, it is possible that the rule is not meant for him and we would be going ahead, with the opposition of the Lawgiver. The suspension then is due to the absence of evidence.

Second way: the rule for the rules that have been laid down in the *shari‘a* is that they should not be extended beyond their scope until the intention of the Lawgiver for such extension has been identified. The reason is that the non-provision of an evidence by Him about such extension is an evidence of the absence of such extension, for had it been extendible according to the Lawgiver, He would have provided an evidence for it, and He would also have provided a method of discovering it. The modes of discovering the underlying causes are well known, they have been communicated by the subject matter

of the rule, and in this case the no mode indicates an underlying cause for the text. It thus becomes valid that the extension to something that is not in the texts is not the intention of the Lawgiver.

These two ways are both directed towards the point, except that the first requires suspension without being certain that the assumed extension is not intended, while this second way affirms the possibility that it is intended. Thus, the investigator continues to search for it until he finds a way out, because there is a possibility that it is intended to be extended by the Lawgiver and it is also possible that it is not intended. The second requires certainty in the issue that it is not intended; therefore, the negation of extension is without suspending judgement, but he rules with or without knowledge that it is not intended. Had it been intended He would have determined an evidence for it. As this is not found, the indication is that it is not intended. If he brings an evidence that elaborates the point, contrary to what is believed, he has recourse to it, like a *mujtahid* who is certain about the rule of the issue, but then comes across an evidence that annuls his certainty and goes against it.

Suppose it is said: These two ways are contradictory, because one requires suspension of judgement, while the other requires a ruling. Conceptually they are the same; therefore, when they are combined their rules cancel each other out, and what remains is suspension of judgement alone. How then can they be employed together?

The response is that even if they do conflict for the jurist in some issues and it necessarily leads to suspension of judgement, because they are like two evidences where one is not preferred over the other, thus, the issue becomes one of the conflict of two evidences for the rule. It is also possible that they do not conflict with each other as in the case of two jurists examining the same issue or a single jurist examining the issue at two different times or considering two separate issues. In one case the method of suspension will be stronger in his view, while the method of negation will be stronger in another issue. Consequently, there is no conflict in the absolute sense.

Further, we have come to know through the intention of the Lawgiver that there is a separation between acts of worship and transactions, and that the element of ritual obedience is predominant in the category of acts of worship, while the element of turning to the underlying meanings is predominant in human practices. The reverse in the two categories is rare. It is for this reason that Mālik did not acknowledge mere cleanliness for the removal of impurities and legal impurity so that he stipulated the use of absolute water; he stipulated intention in the removal of legal impurity even though cleanliness is attained without this; he forbade the pronouncing of another thing in place of *takbīr* and salutation; he forbade the payment of *zakāt* on the basis of valuation; he restricted his view to number alone in expiation, along with other issues that require the confining of acts to what is stated in the text or their exact equivalents. In the category of human practices, he gave predominance to the

underlying meanings; therefore, he upheld the principle of *maṣāliḥ mursala* and *istiḥsān* about which he said that it was nine-tenths of knowledge (of law), and so on. A discussion about this has already preceded¹⁴⁵ along with the evidence for it. If this is established, then the mode of negation is operative in acts of worship, while the way of suspension of judgement is operative in human practices.

It is possible, however, to take into account the underlying meaning in the case of acts of worship. When something of this type becomes apparent the rest are treated in the same way. This is the method of the Ḥanafīs. Ritual obedience can be acknowledged in the case of human practices too; when something becomes apparent the rest are treated the same way. This is the method of the Zāhiriyya. The principal thought is what has been stated above. The principles of the original negation and presumption of continuity refer to this principle.

Third method: The Lawgiver has primary as well as secondary purposes in the elaboration of the legal rules of human practice and worship.

An example of this is the marriage contract. It has been legislated with procreation as its primary purpose. This is followed (as secondary purposes) by: demand for residence; marital relations; co-operation for the interests of this world and the Hereafter; utilization of the lawful; examining the traits created by Allāh in the case of women; adornment through the wealth of the woman; duty of her maintenance, and of his children from her, or even from others being their brethren, on the husband; protection from falling into the commission of the unlawful with respect to lust of the organs and of the eye; the increase in being thankful for the blessings bestowed by Allāh on His servant; and other such purposes. All these are included in the purpose of the Lawgiver in the legislation of the contract of marriage. Among these are matters that are mentioned in, or are indicated by, the texts, and among these are purposes that have become known through other evidences and the method of induction applied to the texts. The secondary purposes that have been expressly stated establish the primary purpose, strengthen its underlying wisdom, call out for its requirements and permanence, and seek the acquisition of mutual compassion, bonding and mutual affection, which are factors that lead to the attainment of the primary purpose of procreation determined by the Lawgiver. We have reasoned that anything that has not been expressly stated, but has this attribute, is also the purpose of the Lawgiver, as is related about the act of ʿUmar ibn al-Khaṭṭāb (God be pleased with him) of marrying Umm Kulthūm, daughter of ʿAlī ibn Abī Ṭālib (God be pleased with him), in order to seek honour of lineage and the strengthening of the bond between the two houses. There are other examples too. There is no doubt that marriage concluded for such objectives is compatible and intending such a cause is good.

In light of this, it becomes evident that the negation of these factors is contrary in the absolute sense to the purpose of the Lawgiver in so far as

the ultimate aim is opposed to the strengthening of bonds, residence and compatibility. For example, like marrying the woman so that she can become lawful for one who had divorced her thrice. Such a contract, according to one who forbids it, is opposed to the purpose of strengthening of bonds, which the Lawgiver has desired to be permanent until the termination of life without attached stipulations, when the purpose of this contract is severance through divorce. The same applies to the contract of *mutʿa* (temporary marriage) and every other contract of such a temporary nature. This shows more intensely that the purpose of the Lawgiver is the protection of permanence in the relationship, in so far as He prohibited those that do not have this attribute.

Acts of worship are also like this. The primary purpose in these is to turn towards the One and single Him out as the sole objective under all circumstances. This primary intention is followed by ritual obedience to attain a higher status in the Hereafter, or to be a friend of Allāh, the Exalted, along with other such things. These secondary purposes emphasize the primary purpose, act as factors urging on towards it, and require it persistently both secretly and openly. This is different from the case where the secondary purpose does not require permanence nor does it emphasize it, as in the case of intended ritual obedience for the preservation of wealth and life, or to acquire charity or acclaim, which is like the act of the hypocrites or those who wish to be seen among men. An intention directed towards these matters is not emphatic nor does it lead to permanence, rather it supports relinquishment and laziness with respect to the act. It is for this reason that the concerned person does not persistently undertake the act except when his expected needs are to be satisfied, and he gives up the act when these are met. Allāh, the Exalted, has said, "There are among men some who serve Allāh, as it were, on the verge."¹⁴⁶

This type of purpose is contrary to the purpose of the Lawgiver if an intention to do so accompanies it, because the purpose can be attained secondarily without an intention. A person marrying with the aim of permanence and the continuation of marriage can be separated and his situation will be the same as that of one undertaking *mutʿa* or *ḥalāla*. One worshipping with the intention of persistence and emphasis may attain the preservation of life, wealth, status and acclaim, and in this he becomes similar to the worshipper for public fame and acclaim. The difference between them is obvious from the fact that the person intending the secondary purpose of emphasis desires permanence, while the person intending the secondary purpose that is not emphatic desires separation.

Suppose it is said: In these opposing acts, is the specific opposition to be taken into account or is it sufficient that compatibility is not acknowledged? The explanation is that the *mutʿa* contract requires specific separation; therefore, it is not valid, because opposition to the intention of the Lawgiver is specified. Marriage by a person who intends to harm his wife, to take over her wealth, or just to have sex with her, and such other intentions, is one that

does not require establishing a relationship, but despite this it does not aim for specified separation that opposes the intention of the Lawgiver in legislating the marriage. It does not imply specific opposition, because intending harm for the wife does not imply the occurrence of such opposition, nor does the occurrence of injury imply the occurrence of the grave misfortune of divorce, as reconciliation is possible or a ruling can be obtained against the husband, or this causal thought itself may disappear. Even though the primary purpose is implied here it is not specified.

The response will be: There is no doubt that specific implied opposition is forbidden and its unqualified implication is a nullity in both acts of worship and human practices. Thus, it is not proper to express ritual obedience through what is manifestly unlawful with reference to the purposes even if it is possible to call it lawful when the act itself is viewed. It is, likewise, not proper to marry with such an intention. As for acts that do not imply specific opposition, like marriage with the intent to injure, marriage facilitating remarriage according to those who deem it valid, there are two interpretations here. The intention, even though it is not compatible, does not manifest specified opposition. One who prefers the aspect of non-compatibility here, prohibits the act, while one who prefers the aspect of the absence of identification of opposition, does not prohibit it. This is reflected in the example of marriage with the intent to injure. It belongs to the category of strengthening sin and prohibited acts through a contract of marriage that is valid in itself. The marriage contract stands alone with respect to the legal rule assigned, in which both subsistence and separation are possible, however, intent to injure becomes the *prima facie* cause of separation. One who takes such a cause into account prohibits the contract, while one who does not acknowledge it, does not prohibit it.

Sub-Issue: Secondary Purposes in Acts

This discussion is based on the fact that the Lawgiver has secondary purposes for both acts of worship and human transactions. For human practices, it is evident and examples about them have preceded. As for acts of worship, it has been established for these too.

Prayer, for example, is a fundamental that has been prescribed in the law for devotion to Allāh, glory be to Him, with sincerity of attention directed towards Him, standing before Him in all submission and humility, invoking His remembrance in the mind. The Exalted has said, “And establish regular prayer for My remembrance”,¹⁴⁷ and He said, “Recite what is sent of the Book by inspiration to thee, and establish regular prayer: for prayer restrains from shameful and evil deeds; and remembrance of Allāh is the greatest (thing in life) without doubt.”¹⁴⁸ A tradition says, “The person praying has a confidential conversation with his Lord.”¹⁴⁹

Thereafter, prayer has secondary purposes, like the prohibition from vile and unlawful things, seeking solace in it from the weariness of the world. A tradition says, “Give us solace (though your call for prayer), O Bilāl.”¹⁵⁰ A sound tradition says, “The joy of my eyes is in prayer.”¹⁵¹ It also provides the opportunity to seek sustenance through it. Allāh, the Exalted, has said, “Enjoin prayer on thy people, and be constant therein. We ask thee not to provide sustenance: We provide it for thee.”¹⁵² The elaboration of this meaning is found in a tradition.¹⁵³ Prayer also provides for the satisfaction of needs like the prayer of *al-istikhāra* and that of *al-ḥāja*. It makes a demand for attaining a place in heaven and protection from the fire of hell; this is a pure and general benefit. The person praying is in the protection of Allāh, as a tradition says, “A person who offers the morning prayer continues to be the liability of Allāh (throughout the day)”¹⁵⁴ and he also attains a noble status, for Allāh has said, “And as for the night keep awake a part of it as an additional prayer for thee: soon will thy Lord raise thee to a station of praise and glory!”¹⁵⁵ Thus, the station of praise and glory is granted for prayer in the later part of the night.

In fasting, there is the blocking of the avenues open to Satan, entry (into heaven) through Bāb al-Rayyān, and the seeking of support for protection from the torment of sexual urges. A tradition says, “Whoever is able to marry should marry, but one who cannot should fast, for fasting enables him to abstain.”¹⁵⁶ The Prophet (pbuh) said, “Fasting is like a shield”¹⁵⁷ and he said, “A person who is one of those who fast will be invited to heaven from the Gate called al-Rayyān.”¹⁵⁸

Likewise, in all other acts of worship there are benefits pertaining to the Hereafter, which are general, and there are worldly benefits too. All these are secondary to the primary benefit, which is submission and devotion to Allāh, as has preceded. After this primary benefit, all other benefits, those that have been mentioned and those not mentioned, follow this primary purpose. As they are secondary, they are examined in accordance with the preceding division. Thus, the first are emphatic, like a demand for public and private benefit. The (second) opposite of this is the seeking of wealth and fame, and with this division the primary purpose is not affirmed; rather, it is opposed to this purpose. The third is like seeking the elimination of lust through fasting along with all the secondary purposes that have been mentioned in the issue of acquiring benefits. It is necessary to examine this thoroughly. The second implies the absence of affirmation varying with what is implied to mean the opposite of affirmation in specific terms as well as what is not in specific terms.

Further, there is another aspect of the examination that relates to acts of worship through which favours are requested, and these are the resultant favours granted by Allāh, the Exalted, to the obedient servant, the ornaments with which he is adorned. The first of these is the spiritual reward of the Hereafter, in terms of winning a place in heaven and attaining higher stations.

In so far as this is the reason – when intended – that leads to action that is the primary purpose of devotion to Allāh and submission to His Greatness, the worshipping of Allāh from his perspective is valid without intervention or adulteration. The intention is to have recourse to One in whose hands are all rewards; therefore, all sincerity is to Him.

What has been stated in this context, and has been deemed by some as a demand for wages where the person is the servant, is derogatory; the discussion about this has already preceded. This has another side to it. A person acting for praise, greatness or a grant is one working for worldly lip service. This kind of meaning is not established (for acts of worship) as has preceded. Further, his act does not have a firm foundation, and because there is no devotion in it, it is futile. If it is assumed that it is purely for Allāh, but he has intended the attainment of this result, then this intention does not strengthen devotion to Allāh, rather it strengthens the relinquishment of devotion. The exception is where he is desperate for a grant, and he asks Allāh for such a grant. He asks Him due to the adversity affecting him and due to deprivation and the loss of resources. In such a situation, his act implies pure devotion and not lip service. There is no ambiguity in the validity of this act; it is an act implying what ritual obedience has been legislated for, and it strengthens this fact. The basis for it are the words of Allāh, the Exalted, “Enjoin prayer on thy people, and be constant therein. We ask thee not to provide sustenance: We provide it for thee.”¹⁵⁹ It is related from the Prophet (pbuh) that “when he was in dire straits and his family were in need of the bounties of Allāh and sustenance, he used to direct them to pray”, and this was based on the above verse. It was a prayer for the sake of Allāh through which the granting of favours that are with Allāh is sought.

This was the road travelled by Ibn al-‘Arabī and his Shaykh with respect to a person who makes his acts manifest so that his moral probity is established. Leadership by such a person is valid, so that people follow him as far as he is following the *shari‘a* and meets the conditions for this, and when there is no one else who can fill this position. There is no harm in this according to both of them, because he is undertaking what he has been commanded to do, and also because this manifested act of worship does not negate the validity of the legal basis of this type of worship. This is distinguished from the case of the person who intends¹⁶⁰ to prove his moral probity before the people or his suitability for leadership or something else. The reason is that he is anxious to do so and his act does not reflect persistence, because it carries within it the seeking of fame and greatness among people on the basis of his acts of worship.

What can be examined here is cutting one’s self off from acts in order to attain the status of a saint, scholar and so on. The two factors are operative here.¹⁶¹ The evidence of permissibility is in the words of the Exalted, “And give us (the grace) to lead the righteous”,¹⁶² and the tradition of the date-palm when ‘Umar said to his son, “Had you spoken and said it, it would have

been better in my view.”¹⁶³ Examine *al-ʿUṭaybiyya* for the issue. I believe the difference between Mālik and his Shaykh in it is based on these two factors.

The ambiguity in this context is about the stripping of the self of action to gain knowledge of the world of spirits, seeing angels, knowledge of the supernatural, acquiring ability for wonder-works, knowledge of unknown disciplines and spiritual worlds, as well as other things resembling these. Someone may say: An intention to do something like this with ritual obedience is valid and compatible, because the result refers back to attaining the status of a saint (friend of God), to be a special person for Allāh and a chosen one among the people. This type of demand is valid as the purpose of the *sharīʿa* amounts to an advancement towards this. The evidence of permissibility is what has preceded in the examples provided before this, without a distinction. It may also be said: This lies outside the ambit of what has preceded, for it is a conjecture about the unseen world, and added to this is the fact that he renders the worship of Allāh as a means to attain this end, and this in itself amounts to isolating one’s self from worship, because the person having such intention falls under one interpretation of the words, “There are among men some who serve Allāh, as it were, on the verge.”¹⁶⁴ The same is the case here. If he attains what he requires, he becomes happy and his intention is ritual obedience. His personal purpose is strengthened here, but the act of worship is weakened. If he does not attain his purpose, he discards the act of worship and probably lies about the results of the acts that Allāh gifts to His devoted servants. It is related that someone heard the tradition, “If a person devotes forty mornings (*taḥajjud*) to Allāh, the founts of wisdom will burst forth from his heart and appear on his tongue.”¹⁶⁵ A person followed this for the attainment of *ḥikma* (wisdom), but the door was not opened for him. The story reached a learned person and he said, “He devoted himself to the seeking of wisdom, but he did not give devotion to Allāh.” The same rule applies to all the remaining desired things mentioned above along with others like them. I do not know of an evidence that supports the seeking of these things, and what there is goes against such a pursuit. What is “unseen” for the human being is not related to obligations; therefore, its attainment is not demanded nor is its pursuit specifically urged. It is stated in the books of *tafsīr* that a man asked the Prophet (pbuh) saying, “What is the affair of the moon, it appears thin as a thread. It then grows until it appears in the shape of a full moon, and then reverts to its earlier shape?” The verse, “They ask thee concerning the new moons. Say: They are but signs to mark fixed periods of time in (the affairs of) men, and for pilgrimage. It is no virtue if ye enter your houses from the back: It is virtue if ye fear Allāh. Enter houses through the proper doors: And fear Allāh. That ye may prosper.”¹⁶⁶ The Almighty deemed the entering of houses from the back doors as an illustration included in the response required for this question. The reason is that the questioner asked something that he was under no obligation to seek out.

It is not to be said: Knowledge about Allāh, His attributes and His acts is required to the same extent as that of His creation, and included in these are worlds of spirits and supernatural things for such knowledge strengthens the soul and widens the state of knowledge about Allāh, the Exalted.

The reason is that we will respond by saying: Under the *sharīʿa*, knowledge is required for being acted upon, in accordance with what has preceded in the preliminary concepts;¹⁶⁷ therefore, what is “seen” in the visible world is sufficient and more than enough,¹⁶⁸ and an excess over that that is surplus. Further, if this is desired as a whole – as was stated by Ibrāhīm (pbuh), “Behold! Abraham said: ‘My Lord! Show me how Thou givest life to the dead.’ He said: ‘Dost thou not then believe?’ He said: ‘Yea! But to satisfy my own heart’”¹⁶⁹ – the response to this is given in several ways.

First: seeking the working of wonders through supplication and demanding the granting of vision through knowledge is not to be denied. The examination here is of the act of the person who takes to the worshipping of Allāh and intends thereby the seeing of the mentioned things. The door of supplication, under the *sharīʿa*, is open for matters that pertain to this world as well as for matters of the Hereafter, as long as the supplication is not for an act of disobedience. The purpose of worship is to turn one’s attention towards Allāh and to act in devotion to Him, and to submit to Him in pure devotion in a manner that does not admit of turning towards another (object of worship or thing). Had devoted acts of worship for Allāh in all worship not been supported by compensation and reward in the Hereafter, the intention to worship would not have been proper. Despite this, most masters of the spiritual realm attempt to remove such an intention from themselves. How then can the two be deemed similar? I mean, the pursuit of the supernatural through supplication along with the intention to seek it through worship. How far are the two removed from each other, for one who ponders over this.

Second: if we do not find anything that can serve as an evidence for all this, we would have had some excuse for making the error of moving from the seen world to the unseen. Why should it be so when there are wonders and amazing things in the visible world, they are close for the taking, easy to feel, and will last until the end of time. We have not acquired information or knowledge about them even to the extent of ten per cent. If someone with reason looks at the smallest of signs and the most insignificant of things, he will find the wisdom and wonders placed in them by the Creator. He will be amazed and will be unable to understand them. It is for this reason that Allāh, the Exalted, has directed us in His Book to examine these things, “Do they see nothing in the kingdom of the heavens and the earth and all that Allāh hath created? (Do they not see) that it may well be that their term is nigh drawing to an end? In what message after this will they then believe?”¹⁷⁰ “Do they not look at the camels, how they are made? And at the sky, how it is raised high?”¹⁷¹ “Do they not look at the sky above them? How We have made it and adorned

it, and there are no flaws in it? And the earth, We have spread it out, and set thereon mountains standing firm, and produced therein every kind of beautiful growth (in pairs). For an insight and a reminder to every servant turning (to Allāh).”¹⁷² It is known that He did not command them to investigate things that are concealed from them and about which they normally have no knowledge except through supernatural means, because it is a transference to something that can rarely be reached. If you study the verses in which the angels as well as unseen worlds have been mentioned, you will not find them directing an investigation of these things, nor a demand for acquiring information about them, their essence and reality. This distinction is sufficient in indicating that an investigation of these things is not required by the *shariʿa*, and if it is not required it is not necessary that they be sought.

Third: the basis of this special search is philosophical. Concern with the seeking of asceticism and information about the unseen world that is beyond the senses has been transmitted from the wise men of early days and from philosophers who probed the depths of these disciplines, from among those who believed in God and those who did not. It is for this reason that you find them prescribing, for the search of such ideas, special training that has not been laid down by the *shariʿa* of Muḥammad (pbuh). This includes the stipulation of vegetarianism and the avoidance of animal meat or what is produced from animal constituents, along with other conditions that have not been transmitted in the *shariʿa*, nor is it found in transmissions from the worthy ancestors or their reports. Likewise, asceticism or occupation with the world of spirits, or related things, has not been transmitted from any one of them. This provides sufficient evidence that these things are not required, as will be coming up in what follows, with the power of Allāh, the Exalted.

Fourth: the demand for seeking information about what is unseen for us with respect to matters of the spirit and other wonders of the unseen is like demanding information about things that can be discovered by the senses but are far removed from us, like distant regions and lands or things deep under the ground. The reason is that all of these are the handiwork of Allāh, the Exalted. Just as it is not reasonable to say that a person worshipping Allāh should intend that someone from Andalus should acquire information about Baghdad, Khorasan and the more distant lands of China, likewise it is not necessary for such a person to acquire information about things that cannot be known with the senses.

Fifth: if it is assumed that this is proper, it is confronted by numerous obstacles, and unsurpassable barriers that intervene between a human being and his objective. These are in reality trials that Allāh has instituted for his servants so that He can see how they behave. When a human being compares the interest in the attainment of these things with the injury that is involved, the aspect of obstacles comes out on top, and the search for such things is

turned down. It is for this reason that the established Sufis did not persist in the search for these things, nor did they consent to interference in their worship by anything, so much so that some of them exaggerated and upheld spiritual reward in seeking what has preceded. An extreme obstacle is the seeking of these things through acts of worship such as prayer, fasting, remembrance and the like – that is, acts that require complete devotion – thus, it is not proper to seek benefits through them. A person seeking knowledge of spiritual matters does so either in obedience to the command of Allāh and His Messenger – and this is not found – or because he likes to attain knowledge that no other human being has attained. He is, therefore, like a person taking up travel to see unseen lands or wonders buried in the earth, but not for another reason. This is merely the seeking of personal benefit and does not have an element of worship in it. The end result of the matter is that things like these are not included in the reason for which worship has actually been prescribed, which is the realization of pure worship.

Suppose it is said: A worthy ancestor was asked about a preventive medicine and he replied that it is the giving up of bad acts. Among the well-known principles is that obedience leads to greater obedience and that blessings are not received except through blessings, as is stated in a tradition, just as evil generates greater evil. Does a human being, or does he not, have to do good to attain good? If you reply in the negative, it will be contrary to this principle, and if you reply in the affirmative, it will go against what is established.

The response is that this is another approach. A human being knows, for example, that what is stopping him from doing good is a certain evil act of his, so he gives up the evil to attain the blessing for which he will receive spiritual reward, or that the doing of good will lead him on to another good thing. This is support of obedience with obedience; there is no ambiguity in it. Allāh, the Exalted, has said, “Nay, seek (Allāh’s) help with patient perseverance and prayer: It is indeed hard, except to those who are humble”¹⁷³ and He said, “Help ye one another in righteousness and piety.”¹⁷⁴ The issue of prevention belongs to this category. As for the matter under discussion, the conclusion is that it is the demand for the benefit of lust that he makes through obedience. What can be closer than this to acts that are devoid of devotion?

The result for one who acknowledges that acts belonging to the secondary category strengthen and support the primary purpose of worship and do not negate it, is that such a secondary purpose is proper, and one that does not do so is not. The secondary purposes in relation to the primary purposes are of three types:

First: the secondary purposes are those that imply the support, link with, reliance on, and inclination towards the primary purposes. Thus, there remains no doubt that these are intended by the Lawgiver. Bringing about the causes of these secondary purposes through lawful means is compatible with the intention of the Lawgiver and, therefore, sound.

Second: these are secondary purposes that imply the specific elimination of the primary purposes. There is no ambiguity about these too that intending them is opposed to the intention of the Lawgiver. Bringing about their causes in any way is not valid.

Third: these are secondary purposes that neither imply support of, nor link with, the primary purposes, but they also do not specifically imply the elimination of the primary purposes. Thus, they are valid in the case of human transactions, but not in the case of acts of worship. As for their non-validity for acts of worship, it is obvious. As for their validity for human practices, it is due to the permissibility of attaining a link with and reliance upon the primary purposes after causation. This entails some disagreement, for it may be said: If a secondary purpose does not imply the support of the primary purposes, when the Lawgiver has intended such support, then such causation is not compatible with the intention of the Lawgiver; therefore, it is not valid. It may also be said: Even if it is accepted as true that it is not compatible, it is also true that it does not oppose the primary purpose, because it does not intend the final elimination of what the Lawgiver has laid down; in the causation something has been intended that can possibly be attained along with the intention of the Lawgiver. This is emphasized by the fact that the Lawgiver too may intend the removal of the cause. It is for this reason that He has legislated divorce in marriage, revocation in sale, pardon in retaliation (*qisāṣ*), and He permitted evasion of conception, even if it appears as an afterthought that these matters are contrary to the intention of the Lawgiver in so far as each one of them is specifically opposed to it. An illustration for this is where the person specifically intends the satisfaction of desires, and does not turn to the primary intention of the Lawgiver with respect to procreation. This would not be opposed to the intention of the Lawgiver, as has preceded, and so also other cases that have been mentioned as examples.

This does not include the case where the person opposing the intention of the Lawgiver is doing so necessarily for a different cause, which is the adoption of a fiction as a cause to attain a result. This is done in a manner that makes the causation futile, there being no legal consequence for it, except the attaining of what is beyond it. Thus, when he brings it about the cause stands dissolved, and gets detached from its original basis. This does not happen, unless it is legally detached in the original cause. If, however, it is possible for it not to be so detached or where it is possible that it is not detached from its basis, it is not opposed to the intention of the Lawgiver in any way. This is the occasion of *ijtihād*. The bringing about of the cause remains even if it is accompanied by a prohibition, and this too is a matter subject to examination. The issues has been discussed earlier. Allāh knows best.

The Fourth Rational Method of Identifying the Purposes of the Lawgiver:¹⁷⁵ this method pertains to the silence about the legislation of the cause or about the legality of the act with the existence of the ruling for

the legal meaning. The elaboration is that the silence of the Lawgiver about a legal rule is of two types:

First: the Lawgiver maintains silence about it because there is no incident that requires a ruling and there is no necessity for it should be settled, as in the case of incidents that occurred after the time of the Messenger of Allāh (pbuh). As these problems did not exist, He maintained silence about them despite the existence of the legal solutions. This occurred after this time. Thus, the experts of *shariʿa* felt the need to examine them and to implement them as they were determined by their universal principles. The rulings given by the worthy ancestors refer to this type, like the collection of the *muṣḥaf* (bound copy of the Qurʾān), recording of knowledge, creating liability for the artisans and the like for which there was no implementation during the period of the Messenger of Allāh (pbuh), as these were not the incidents of his time, nor was action offered according to the legal necessity. This type operates on the detailed rules, without any ambiguity, according to the principles determined in the law. The intention of the Law in these is well known through the methods¹⁷⁶ mentioned earlier.

Second: the Lawgiver maintains silence about it when the reason requiring it exists. He does not determine a rule for it at the time of occurrence of the incident in addition to part that occurred in those times. Silence in this category is like an express statement that the intention of the Lawgiver is not to exceed the stated rule, nor to lessen its impact. The reason is that the necessary meaning that led to the rule of action was in existence and yet He did not legislate a rule so it becomes an indication of it. This was an express statement that an addition over what was given would be an addition by way of innovation. It would amount to opposition to what the Lawgiver had intended, for what was understood from His intention was the stopping of the rule at the limit determined, without any increase or decrease.

An example of this is the prostrations of thankfulness, in Mālik's school. It is the case that determined this meaning as contained in *al-ʿUṭaybiyya* from the narration of Ashhab and Ibn Nāfiʿ. It is stated therein: Mālik was asked about a man for whom something happens that he likes, so he prostrates for Allāh, the Majestic and Glorious, in all thankfulness. He said: He is not to do it; this is not what has been recorded from the practice of the people. It was said to him: Abū Bakr al-Ṣiddīq – according to what is said – offered a prostration to Allāh out of thankfulness. Did you then hear about it? He replied: I have not heard this, and I hold that they attribute falsehood to Abū Bakr. It is straying from the path to say a person hears something and says that I have not heard anything contrary to this. It was said to him: Verily, we ask you to learn about your opinion so that we counter this view with it. We bring for you another thing that you have not heard from us: Allāh granted victory to the Messenger of Allāh (pbuh) and to the Muslims after him, so have you heard that any of them did this? If a report like this comes to you that is

current among people and is practised by them and about which nothing has been narrated from them (ancestors), then this is what you do. The reason is that if it had been so it would have been mentioned for it belongs to a matter that the people would have practised. Have you then heard that any of them offered a prostration (in this manner)? This is consensus. If such an incident happens, about which you know nothing, just reject it. This is the end of the narration. It includes the assumption of questions and answers as has preceded.

The resolution of the question is like saying about innovation, for example, that it is an act about whose commission the Lawgiver is silent, or it is a relinquishment whose commission the Lawgiver has permitted. You may also say: "An act about whose permission the Lawgiver is silent, or a relinquishment about which the Lawgiver has given permission, or it is an act that is external to these." The first are like prostrations of thankfulness, according to Mālik, in so far as there is no evidence for their commission, and supplications in collective form following the usual prayers, and gathering for supplications after the middle (*‘aṣr*) on the day of ‘Arafa in a location other than ‘Arafāt. The second are like fasts along with the giving up of speech, and the working of the body by giving up particular eatables. The third is the imposition of fasting for two consecutive months in the case of expiation of *ẓihār* (injurious assimilation) for one who has a slave that can be emancipated.

This third type is contrary to text of the *sharī‘a*; therefore, it is not validated under any circumstances. The fact that it is a condemnable innovation is obvious. As for the first two types – and these are in reality acts or omission about which the Lawgiver is silent with respect to their commission or omission – we say: From where has the opposition of the intention of the Lawgiver been discovered or that these are acts that oppose the lawful? They have not been laid down with the lawful on the same issue; rather, they are in the meaning of *maṣāliḥ mursala*, while innovation occurs due to interests that are claimed by human beings (on the basis of their own desires or reason), when they believe that these interests do not oppose the intention of the Lawgiver, nor do the prescribing of actions. As for the intention, it is conceded on the basis of the assumption. As for the act, the Lawgiver has not legislated an act that is negated by this created act, nor an omission due to an act that this creator has invented, like the omission of prayer and drinking of wine. In fact, the reality is that it is a matter about which there is silence from the Lawgiver, and silence from the Lawgiver does not imply opposition; nor is a particular intention to be understood from the Lawgiver that it opposes or goes against. If this is the case, we have recourse to an examination of the different meanings of *maṣāliḥ* (interests). Anything in which we discover an interest, acting upon the *maṣāliḥ mursala*, we accept, and anything in which we find an injury, again acting on the *maṣāliḥ*, we reject. Things in which we find neither this nor that are like the rest of the permissible matters, and here too we act on the *maṣāliḥ mursala*. The net result then is that any new

thing whose being is deemed blameworthy is equivalent to every new thing that is deemed praiseworthy in meaning. What then is the basis for blame in this, and what is the basis of the praise in that? This is the case when there is no text specifically indicating blame or praise.

The statement of response to what has been mentioned by Mālik, is that silence about the rule of commission and omission here – if a reason is found requiring commission or omission – is consensus on the part of each maintainer of silence that there is to be no addition to what was prevalent, which is the purpose underlying this idea. Ibn Rushd said: The interpretation here is that he did not view it as something that was legislated in religion – that is, prostrations of thankfulness, either as an obligation or as supererogatory. The reason is that the Prophet (pbuh) did not command this nor did he commit such an act, and neither did the Muslims agree on the adoption of such an act. The laws are not established except on the basis of one these processes. He said: The reasoning that the Messenger of Allāh (pbuh) did not perform such an act, nor did the Muslims do so after him, to mean that if they had done so it would have been transmitted, is valid. The basis is that the needs of the Muslims having been met to the extent of the relinquishment of transmission of the law that is part of the religion is not valid. This is especially so for they have been commanded to propagate these transmissions. He said: This is a principle from among the major principles, and it is on this that the waiver of *zakāt* in vegetation and vegetables is affirmed despite the obligation of *zakāt* due to the generality of the words of the Prophet (pbuh), “In what is irrigated by the sky, springs and the unirrigated there is a tenth (*ushr*), and in what is irrigated by the water-wheel there is one-half of a tenth.”¹⁷⁷ The reason is that we adopted the transmission about the relinquishment of charging of *zakāt* on these things by the Prophet (pbuh) as a prevailing *sunna*. In the same way we adopt the relinquishment of transmission, from the Prophet (pbuh), about prostrations of thankfulness as a prevailing *sunna* to the effect that there are no prostrations in such matters. Thereafter, he stated the view of al-Shāfi‘ī and discussed it. The purpose in the issue is to record Mālik’s interpretation about it in so far as it amounts to an innovation, and not his view that it is an innovation in the absolute sense.

It is on these lines that some of the jurists worked to prohibit marriage by one facilitating remarriage to the previous divorcer. They maintained that it is an innovation to be rejected on the grounds that in the period of the Prophet (pbuh), the idea of lenience and exemption for the spouses was found to enable the husband to revert to the position that he had in the first place. Despite this, the Prophet (pbuh) did not legislate it although Rafā‘a’s wife was eager to return to him, which indicates that *ḥalāla* is not lawful for her nor for others besides her. This is a principle that is sound. When it is taken into account, it elaborates the distinction between what is innovation and what is not. It also indicates that the existence of the implied meaning despite non-legislation is

an evidence that the intention of the Lawgiver is to negate excess over what was in existence prior to this. When the excess is adopted, it becomes obvious that it opposes the intention of the Lawgiver; it is, therefore, a nullity.

NOTES

- 1 Qurʾān 98:5.
- 2 Qurʾān 39:2.
- 3 Qurʾān 16:106.
- 4 Qurʾān 9:54.
- 5 Qurʾān 2:231.
- 6 Qurʾān 2:231.
- 7 Qurʾān 3:28.
- 8 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, Tr. No. 1; and Muslim, *Ṣaḥīḥ*, vol. 3, 1515, Tr. No. 1907.
- 9 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 222 Tr. No. 123; and Muslim, *Ṣaḥīḥ*, vol. 3, 1512, Tr. No. 1904.
- 10 It is recorded by Muslim, *Ṣaḥīḥ*, Tr. No. 2985.
- 11 Qurʾān 18:110.
- 12 It is recorded by Abū Dāwūd, *Sunan*, vol. 2, 428, Tr. No. 1851.
- 13 The learned Author is talking about the Ḥanafī school here. The Ḥanafīs do not require intention for certain forms of worship and they make the statements made in jest or under coercion as binding for purposes of marriage, divorce and emancipation of slaves.
- 14 It is recorded by Abū Dāwūd, *Sunan*, vol. 2, 664, 2194.
- 15 It is recorded by ‘Abd al-Razzāq in *al-Muṣannaḥ*, vol. 6, 135, Tr. No. 10250.
- 16 It is recorded by Saʿīd ibn Manṣūr, *Sunan*, Tr. No. 1609.
- 17 Editor: That is the “first contemplation.” This is an act that is mere contemplation leading to knowledge, while the obligation is directed towards the act itself. As for the intention of obedience in such contemplation, it is not possible, because there can be no intention of obedience prior to a knowledge of Allāh through such contemplation. Consequently, the intention becomes impossible and is not the object of the communication.
- 18 Editor: That is, in the second meaning as discussed in the topic of nullity, which is the non-assignment of spiritual reward in the Hereafter.
- 19 This is an “exchange” marriage where one person gives away his sister or daughter in marriage to a person who in turn gives his sister or daughter in marriage to the first person. There is usually no dower in such a marriage as the dower of one woman is the dower of the other. Thus, it is an exchange of considerations, with injustice for the females.
- 20 This should be read as “even if they had intended the *shighār* contract.”
- 21 Editor: The opinion of Abū Ḥanifa is that if the guardians expressly state that the marriage of one woman will amount to the dower of the other, the contract will be valid and each woman will be entitled to reasonable dower. This is based on the reasoning that the contract is valid even if the dower was negated, because *shighār* pertains to the negation of dower.
- 22 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 380, Tr. No. 893; and Muslim, *Ṣaḥīḥ*, vol. 3, 1459, Tr. No. 1829.
- 23 Qurʾān 57:7.

- 24 Qurʾān 2:30.
- 25 Qurʾān 7:129.
- 26 Qurʾān 6:165.
- 27 See the previous tradition.
- 28 Qurʾān 4:115.
- 29 It is recorded by several scholars, and by Ibn ʿAbd al-Barr, *al-Jāmiʿ*, vol. 2, 1172, No. 2326.
- 30 Qurʾān 2:231.
- 31 Editor: This is the general principle and the core of the issue. In other words, it is the result of the analogy referred to earlier.
- 32 Editor: That is, the intention of the Lawgiver is that all these acts be undertaken voluntarily by the person concluding the transaction. Despite the fact they have occurred in a manner that is not legislated and have contradicted the *shariʿa*, they are not nullified; in fact, they are deemed to be valid.
- 33 It is to be noted here that many people have considered *hiyal* to be some kind of trickery and playing around with the law. To dispel this impression, we added an appendix to our book *Theories of Islamic Law* where the topic is discussed at some length showing the importance of *hiyal* in a legal system.
- 34 A marriage contract with a woman to facilitate her remarriage to her former husband who had divorced her through a triple repudiation.
- 35 Editor: That is, his own right. He is permitted to cohabit with his wife, consume laxative, and he is not required to perform prayer that he has already performed. He has, however, violated the sanctity of the command and the prohibition, for he did not concern himself with them.
- 36 The law attributes legal effects to these apparent causes even if they do not actually result in the expected results.
- 37 Qurʾān 4:145, 146.
- 38 Editor: It is explained in the first issue.
- 39 Qurʾān 6:159.
- 40 Qurʾān 6:153.
- 41 It is part of a tradition recorded by Muslim, *Ṣaḥīḥ*, vol. 2, 592, Tr. No. 867.
- 42 Editor: Perhaps, the correct meaning here is “not blameworthy.” The text says it is blameworthy.
- 43 See, e.g., al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 73, Tr. No. 2419.
- 44 See, e.g., al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 561, Tr. No. 820.
- 45 It is recorded by Abū Dāwūd, *Sunan*, vol. 4, 199, Tr. No. 4603.
- 46 See Aḥmad ibn Ḥanbal, *al-Musnad*, No. 3600.
- 47 It is recorded by Ibn Māja, *Sunan*, vol. 2, 1303, Tr. No. 3950.
- 48 Editor: That is, it must operate upon a lawful act. The lawful is the combination of the two.
- 49 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 301, Tr. No. 2697.
- 50 Editor: In *al-Istiṣām* it is stated that she becomes irrevocably divorced from the first. An objection has been raised against his view on the grounds that the second husband is actually having intercourse with the wife of another person. How can his error be attributed to the first husband whose right is denied? The mistake leads to the waiving of punishment and sin from him, but it cannot make another man’s wife lawful for him.
- 51 It is recorded by Abū Dāwūd, *Sunan*, vol. 2, 229, Tr. No. 2083.
- 52 Qurʾān 33:5.
- 53 Qurʾān 2:286.
- 54 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 116, Tr. No. 126.
- 55 Qurʾān 2:286.
- 56 It is recorded by Ibn Māja, *Sunan*, vol. 1, 659, Tr. No. 2045.
- 57 This is the type where injury will not be caused to another necessarily when the *maṣlaḥa* (acquiring an interest or repelling an injury) is exercised.

- 58 This is the type where the person exercising the *maṣlaḥa* actually intends injury to another.
- 59 In the competitive world today, gains made by one person sometimes do result in losses for another. The only obligation is not to intend harm to another.
- 60 This is an example provided by Imām al-Ghazālī where he says that even an issue that is *gharib* or unknown to the *shariʿa* may be approved if it is definitive and general when it does not upset a fundamental principle of the *shariʿa*.
- 61 This case is said to be decided by ʿAlī (God be pleased with him). Artisans or independent contractors, like a tailor for example, were not liable for property left with them in case the property was destroyed. It was the customer who had to prove negligence on the part of the artisan. When this rule led to problems, ʿAlī (God be pleased with him) is said to have changed the rule by shifting the burden of proof to the artisans. Henceforth, they had to show that there was no negligence on their part.
- 62 Editor: That is injury that cannot be repaired, for otherwise injury in general is assumed.
- 63 It is part of a tradition recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 92, Tr. No. 36.
- 64 Qurʾān 5:29.
- 65 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 5, 128, Tr. No. 2483.
- 66 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 565, Tr. No. 481.
- 67 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 10, 438, Tr. No. 6011.
- 68 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 56–57, Tr. No. 13.
- 69 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 116, Tr. No. 1902.
- 70 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 1, 22, Tr. No. 22.
- 71 It is recorded by al-Tirmidhī, *al-Shamāʿil*, Tr. No. 338.
- 72 It is recorded by al-Tirmidhī, *al-Jāmiʿ*, vol. 4, 580, Tr. No. 2362.
- 73 Qurʾān 76:8.
- 74 Qurʾān 59:8.
- 75 At that location the text is as follows: Mālik (God bless him) has recorded that a poor man sought alms from ʿĀʿisha (God be pleased with her). She was fasting and did not have anything besides a loaf. She said to her maidservant. “Give this to him.” She said, “You will have nothing to break your fast with.” She replied, “Give it to him.” The maidservant said, “I did so, but when it was evening someone from the Ahl Bayt, or those who used to send gifts to us, sent a lamb leg roasted with batter. ʿĀʿisha gave it to me saying, ‘Eat of this, it is better than the flat loaf you made.’” It is recorded by Mālik in *al-Muwattaʿ*, vol. 2, 997.
- 76 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 93, Tr. No. 2902. The tradition has preceded with slightly different words.
- 77 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 35, Tr. No. 2820. The tradition has preceded with slightly different words.
- 78 It is recorded by Aḥmad, *al-Musnad*, vol. 1, 248.
- 79 Qurʾān 12:51.
- 80 Editor: Sacrifice in terms of wealth.
- 81 That is, al-Nawawī.
- 82 Qurʾān 6:108.
- 83 It is stated by ʿAbd al-Razzāq, *Tafsir*, vol. 2, 215. The indication here is that reviling the gods they worshipped may not be unlawful, as implied by the Author, but it was prohibited lest they reviled God in ignorance. Thus, the lawful means to an unlawful end were blocked. See the Editor’s view in note below.
- 84 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 10, 403, Tr. No. 5973.
- 85 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 6, 546, Tr. No. 3518.
- 86 Qurʾān 2:104.
- 87 Editor: That is, permission or its opposite as is clear in the issue or reviling mentioned in the tradition. The original rule, independent of the means, is that of prohibition. The original

rule is, therefore, of prohibition and so also the means. In the other cases, the original rule is that of permissibility, but it takes the rule of what results from it.

- 88 This tradition was mentioned in volume one of this book. It is recorded by ‘Abd al-Razzāq, *al-Muṣannaḥ*, vol. 8, 184, Tr. No. 4812.
- 89 Qurʾān 4:3.
- 90 Qurʾān 4:34.
- 91 Editor: That is, the three evidences, just as this argument applies there as well.
- 92 Editor: It is like giving a ruling of separation for the wife if he is not able to maintain her, and a similar ruling will apply in the case of the slave as well.
- 93 Editor: In accordance with the parallel that has preceded in the case of using Muslims as shields.
- 94 Editor: That is evidences about the prohibition of meeting caravans outside the city and the shifting of the burden of proof for the artisan.
- 95 Qurʾān 2:264.
- 96 Qurʾān 26:109.
- 97 Qurʾān 34:47.
- 98 Qurʾān 38:86.
- 99 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 202, Tr. No. 709.
- 100 Editor: The reason is that it amounts to the forbidding of evil. In fact, it is at the highest level in this category.
- 101 Qurʾān 4:29.
- 102 Qurʾān 2:188.
- 103 It is part of a tradition recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 13, 264, Tr. No. 7292.
- 104 Qurʾān 42:43.
- 105 Qurʾān 42:40.
- 106 Qurʾān 2:280.
- 107 Editor: That is, in the nineteenth issue of the fourth category.
- 108 Editor: He means thereby where the right of Allāh is predominant.
- 109 Qurʾān 2:8–13.
- 110 Qurʾān 2:14.
- 111 Qurʾān 2:264.
- 112 Qurʾān 4:38.
- 113 Qurʾān 4:142.
- 114 Qurʾān 68:17–20.
- 115 Qurʾān 2:65, 66.
- 116 Qurʾān 2:231.
- 117 Qurʾān 2:228–29.
- 118 Qurʾān 2:229.
- 119 Qurʾān 2:229.
- 120 Qurʾān 4:12.
- 121 Qurʾān 4:6.
- 122 Qurʾān 4:19.
- 123 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-Zakāt, vol. 3, 314, Tr. No. 1450. The tradition has been related from Anas (God be pleased with him). It is also recorded by others within lengthy traditions.
- 124 It is recorded by Ibn Baṭṭa in *Ibṭāl al-Ḥiyāl*, 46–47.
- 125 It is recorded by Aḥmad, *Musnad*, vol. 3, 505; Ibn Mājah, *Sunan*, vol. 2, 960, Tr. No. 2876; Abū Dāwūd, *Sunan*, vol. 3, 30, Tr. No. 2579; and by others.
- 126 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 424, Tr. No. 2236.
- 127 It is recorded by Abū Dāwūd, *Sunan*, vol. 3, 329, Tr. No. 3688.
- 128 It is recorded by al-Khaṭṭābī, *Gharīb al-Ḥadīth*, vol. 1, 218. Some have considered it as weak.

- 129 It is recorded by Aḥmad, *al-Musnad*, vol. 2, 28.
- 130 It is recorded by al-Tirmidhī in *al-Jāmiʿ*, vol. 2, 294.
- 131 It is recorded by al-Tirmidhī in *al-Jāmiʿ*, vol. 3, 623, Tr. No. 1337.
- 132 It is recorded by Ibn Māja, *Sunan*, vol. 2, 813, Tr. No. 2432.
- 133 It is recorded by al-Nasāʾī, *al-Kubrā*, vol. 6, 220.
- 134 It is recorded by Aḥmad, *al-Musnad*, vol. 5, 425.
- 135 It is recorded by Aḥmad, *al-Musnad*, vol. 2, 174.
- 136 It is recorded by ʿAbd al-Razzāq in *al-Muṣannaḥ*, vol. 8, 184–85, Tr. No. 4812, 4813.
- 137 Editor: Thus, a proper gift does not negate the intention of the Lawgiver, which is the removal of meanness, and the strengthening of compassion for people along with favours.
- 138 The learned Author has made a very important point. What he is really trying to say is that the intention behind the act has the result of altering the very nature of the act itself. A gift prior to *zakāt* with a bad intention of evading *zakāt*, makes the act condemnable, but the same act with the true intention of making a gift makes the act commendable. We may note here that all this will apply in the case of rewards of the Hereafter. As far as the present world, and the law, is concerned, the objective theory of contracts will apply whereby the external expressions will be given importance and the inner intention will not be looked into. It is for this reason that the Ḥanafī jurists maintain that the tradition “All acts are determined by intentions” applies to the Hereafter and not to transactions of this world. The tradition does have legal consequences for some acts of worship.
- 139 That is, he can easily propose ransom without tormenting the woman as that is permitted by the law.
- 140 Qurʾān 2:230.
- 141 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 399, Tr. No. 2201.
- 142 Qurʾān 62:9.
- 143 This refers to the prohibition of *ribā* where dealing in *ribā* has been likened to the commission of unlawful sexual intercourse, seventy times and so on.
- 144 Editor: That is, in the declaratory rules, and what is prior to it is about the obligation-creating rules, as is indicated by the examples he provides.
- 145 Editor: In the eighteenth issue where it is said that the basis for acts of worship is ritual obedience, while it is the underlying meaning in other matters.
- 146 Qurʾān 22:11.
- 147 Qurʾān 20:14.
- 148 Qurʾān 29:45.
- 149 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 2, 14, Tr. No. 531.
- 150 It is recorded by Abū Dāwūd, *Sunan*, vol. 4, 296–97, Tr. No. 4985.
- 151 It is recorded by Aḥmad, *Musnad*, vol. 3, 128, 199, 285.
- 152 Qurʾān 20:132.
- 153 Editor: Will be coming up in what follows.
- 154 It is recorded by Muslim, *Ṣaḥīḥ*, vol. 1, 454, Tr. No. 657.
- 155 Qurʾān 17:79.
- 156 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 119, Tr. No. 1905. The term used for abstention implies the bruising of the veins of the testicles, as is done for a gelding.
- 157 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 103, Tr. No. 1894.
- 158 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 4, 111, Tr. No. 1896.
- 159 Qurʾān 20:132.
- 160 Editor: But he is not commanded to do so under the law in so far as he does not possess the conditions that have preceded.
- 161 Editor: The two discussed above – that is, of being praised, considered great or granted favours, and the intention prior to this, which is not prohibited.
- 162 Qurʾān 25:74.

- 163 It is recorded by the two Shaykhs. By al-Bukhārī in *Kitāb al-ʿIlm*, and by Muslim in *Kitāb Ṣiḥḥat al-Qiyāmah*.
- 164 Qurʾān 22:11.
- 165 This tradition has been reported by some either as a *mursal* or as a weak tradition, according to some.
- 166 Qurʾān 2:189.
- 167 He is referring to the thirteen concepts elaborated in the first volume.
- 168 That is, for acting according to the commands of Allāh as laid down in the *sharīʿa*.
- 169 Qurʾān 2:260.
- 170 Qurʾān 7:185.
- 171 Qurʾān 88:17, 18.
- 172 Qurʾān 50:6–8.
- 173 Qurʾān 2:45.
- 174 Qurʾān 5:2.
- 175 This topic is the continuation of the ways in which the intention of the Lawgiver is discovered. He mentioned earlier that there were three such methods (see section above on “Concluding the *Book of Maqāṣid*). Here he brings up another method that does not belong to those first three types.
- 176 Editor: That is, the third method in which it has not been expressly mentioned in the texts but is discovered through the texts by means of induction.
- 177 It is recorded by al-Bukhārī, *Ṣaḥīḥ*, vol. 3, 347, Tr. No. 1483.

GLOSSARY OF TERMS

‘ <i>adāla</i> :’	Moral probity.
‘ <i>ādāt</i> :’	Human practices.
‘ <i>āhād</i> :’	See <i>khābar wāhid</i> .
‘ <i>aḥkām</i> :’	Plural of <i>ḥukm</i> (rule).
‘ <i>aḥkām shar‘īyya</i> :’	Rules of the <i>shar‘a</i> , as distinguished from other types of rules.
‘ <i>alīm</i> :’	Scholar.
‘ <i>āqila</i> :’	Support group (tribal) responsible for paying blood-money on behalf of the offender.
‘ <i>aqīqa</i> :’	A religious rite for the newborn child in which an animal is sacrificed.
‘ <i>aql</i> :’	Reason.
‘ <i>arkān</i> :’	Essential elements; foundations; pillars.
‘ <i>aṣr</i> :’	The middle prayer.
‘ <i>awqāf</i> :’	(Pl. of <i>waqf</i>) Charitable trust(s).
‘ <i>awliyā’</i> :’	(Pl. of <i>wali</i>) In the plural sense it is usually used for friends of Allāh. See also <i>wali</i> .
‘ <i>azīma</i> :’	(Pl. ‘ <i>azā‘im</i>) A rule initially applied as a comprehensive general principle to which exceptions or provisos are provided by the law later. The exception is called <i>rukḥṣa</i> .
‘ <i>bāb</i> :’	The term in the literal sense is applied to a category or chapter, but according to the jurists it means a concept under which a series of related rules are gathered. For example, purification, prayer, liability, contract and so on.
‘ <i>bay‘</i> :’	Exchange, as in barter; sale.
‘ <i>bay‘ al-‘īna</i> :’	The buy-back agreement.
‘ <i>bay‘a</i> :’	Oath of allegiance.
‘ <i>bid‘a</i> :’	Innovation.
‘ <i>bulūgh</i> :’	Puberty; age of majority.
‘ <i>buṭlān</i> :’	Nullity; from <i>bāṭil</i> .
‘ <i>dalīl</i> :’	Evidence. In a literal sense the term means guide, but in technical terms it refers to an evidence that points to or indicates a rule (<i>ḥukm</i>).
‘ <i>darūri</i> :’	Necessary.
‘ <i>darūriyāt</i> :’	Necessities.
‘ <i>ḍharā‘i‘</i> :’	Means to an end.
‘ <i>diya</i> :’	(Pl. <i>diyāt</i>) Blood-money.

dunya:	This world; the lower world.
fāsid:	Irregular; vitiated.
fāsiq:	Disobedient; does not obey the rules of <i>shari'a</i> completely.
faqih:	(Pl. <i>fuqahā'</i>) A Muslim jurist who specializes in <i>fiqh</i> .
fard:	An obligation that is based on definitive evidence.
fatwā:	(Pl. <i>fatāmā</i>) Legal opinion issued by a jurist, a <i>mufti</i> .
fiqh:	Understanding of the <i>shari'a</i> ; jurisprudence; law.
gharib:	Strange; unknown.
gharar:	Uncertainty in contracts that can lead to legal disputes and litigation.
ḥadath:	Legal impurity, which may include actual impurity.
ḥadd:	(Pl. <i>ḥudūd</i>) Boundary fixed by the <i>shari'a</i> . Also used for fixed penalties provided in the <i>shari'a</i> .
ḥāja:	Need.
ḥāji:	An interest acknowledged at the level of needs.
ḥajj:	Pilgrimage to Mecca.
ḥājīyyāt:	Interests linked to needs.
ḥākim:	Ruler; judge; <i>qāḍī</i> .
ḥalāl:	Permitted.
ḥalāla:	Marriage with a woman divorced thrice with the intention of divorcing her so she can marry her first husband. She can marry the first husband only with such an intervening marriage.
ḥaraj:	Harm.
ḥasan:	Good.
ḥarām:	Prohibited.
hiba:	Gift.
ḥifẓ:	Preservation; protection.
ḥikma:	Wisdom; rationale of a rule.
ḥīla:	(Pl. <i>ḥiyal</i>) Legal device or legal fiction.
ḥukm:	Legal rule; legal effects; command. See <i>aḥkām</i> .
ḥukm shar'i:	Legal rule.
ʿibādāt:	Acts of worship; religious rites.
ibqā':	Preservation.
ʿidda:	Waiting period for a divorced woman after which she can remarry.
iḥrām:	Intention; two sheets that the worshipper wears during the pilgrimage.
ijāra:	Hire; lease; renting.
ijmā':	Consensus of jurists on a point of law.
ijtihād:	The process of interpretation of the Qur'ān and the <i>Sunnah</i> for the derivation of legal rules.

ʿilla:	Underlying cause; <i>ratio legis</i> .
imāma:	Leadership. <i>imāma kubrā</i> refers to the ruler, while <i>imāma ṣuḡhrā</i> refers to leading of prayers.
iqālah:	Negotiated rescission or unmaking of a contract.
iqtiḍāʾ al-naṣṣ:	The missing meaning required by the text and supplied by the jurist. Similar to the golden rule of interpretation in law.
isnād:	Chain of transmission.
istiḥsān:	Breach of analogy on the basis of a stronger rule; conflict of rules.
istinbāṭ:	Deduction.
istiṣlāḥ:	Interpretation based on the principle of <i>maṣlaḥa</i> .
istinjā:	Washing after using the privy.
istiqrāʾ:	Induction.
jihād:	War; one of the five pillars of Islam.
jināyāt:	Offences; torts.
jizya:	Poll-tax imposed on able-bodied non-Muslim male citizens of the Muslim state, because the obligation of participating in <i>jihād</i> is not placed on them.
juʿl:	Reward for finding and returning lost property.
karāmāt:	Supernatural powers.
kashf:	Inspiration experienced by a Sufi.
khabar wāhid:	It is a report from the Prophet (pbuh) that does not reach the status of <i>tawātur</i> (continuous narration), or of <i>mashhūr</i> (well known) according to the Ḥanafīs, that is, there are one or two narrators in its chain in the first three generations: Companions, Ṭābiʿūn, and their followers.
khalifa:	Caliph.
khamr:	Wine.
kharāj:	Tax imposed on land.
khiṭāb:	Divine communication.
khuṭba:	Sermon.
kitāba:	Contract between master and slave through which the slave earns and pays for his freedom.
kullī:	Universal.
Lawḥ Maḥfūz:	The Preserved Tablet.
liʿān:	Procedure for divorce after the husband has denied the paternity of the child borne by his wife.
mafsada:	(Pl. <i>mafāsīd</i>) Injury.
makr:	Planning; strategem.
māl:	Property; wealth.
mandūb:	Recommended.
maqāṣid al-sharīʿa:	The purposes of law. Also referred to as objectives of the <i>sharīʿa</i> .

maʿrūf:	Good; commendable.
maṣāliḥ mursala:	Interests not directly acknowledged by the texts.
masālik al-ʿilla:	Methods of discovering the <i>ʿilla</i> (underlying cause; <i>ratio legis</i>).
mashaqqa:	Hardship.
maṣlaḥa:	(Pl. <i>maṣāliḥ</i>). Interests recognized by the law.
mawqūf:	Suspended. Applies mostly to contracts, but also to the suspension of a ruling due to lack of evidence.
muʿamalāt:	Legal rules other than acts of worship.
mubāḥ:	Permissible.
mudabbar:	A slave who becomes free on the death of the master, due to a bequest.
muḍāraba:	A partnership in which the liability of the investor is unlimited, while the worker has no liability.
mufassar:	Elaborated word or meaning.
muftī:	Jurist who issues <i>fatwās</i> .
muḥallil:	The person who enters into a <i>ḥalāla</i> contract. See <i>ḥalāla</i> .
muḥkam:	A word that does not accept further interpretation.
mujtahid:	A jurist who can independently lay down the law through interpretation.
mukallaf:	Subject; <i>sui juris</i> .
muʾmin:	Believer.
munāsib:	Suitable; compatible. An attribute of a rule that is compatible with the purposes of the law.
muqallid:	One who follows the opinion of a <i>mujtahid</i> .
mursal:	A tradition without a complete chain reaching up to the Prophet (pbuh). Also used for an issue that is not within the direct application of the texts; the hold of the texts is released.
musāqāt:	A contract for irrigating and working on farms.
muṣḥaf:	The Qurʾān in two covers.
mushkil:	A word that is very difficult to interpret.
mutʿa:	A temporary marriage contract.
mutashābihāt:	Obscure words. A text whose meaning is known to Allāh Almighty alone.
mutawātir:	Continuous narration. Authentic.
mutawātir maʿnawī:	Continuous in meaning if not in narration.
nahy:	Prohibition.
nasl:	Progeny.
naṣṣ:	A word or text that gives a very clear meaning and does not need further <i>ijtihād</i> or interpretation; like the number 100.

niṣāb:	Minimum scale. In <i>zakāt</i> it is the minimum amount that is subject to a charge. In evidence it means two females for one female.
niyya:	Intention.
qabiḥ:	Bad; evil – in comparison to <i>ḥasan</i> (good).
qadhf:	False accusation of unlawful sexual intercourse.
qādi:	Judge.
qarḍ:	Interest-free loan.
qasāma:	Compurgation; collective oath.
qaṭʿ:	Definitive.
qaṭʿ al-dalāla:	Definitive in its literal implication.
qaṭʿ al-sanad:	Definitive with respect to its chain of transmission.
qatl khataʿ:	Manslaughter; accidental homicide.
qawāʿid:	Principles.
qirāḍ:	The Mālikī term for the partnership called <i>muḍāraba</i> . See <i>mudāraba</i> .
qiṣāṣ:	The law of equality and retaliation; <i>lex talionis</i> . An eye for an eye, a tooth for a tooth.
qiyās:	Syllogism; loosely referred to as analogy.
qiyās jalī:	Manifest analogy as compared to <i>qiyās khafī</i> , which is called <i>istiḥsān</i> .
rakʿa:	A unit of prayer.
raʿy:	Considered legal opinion.
ribā:	Interest; bank interest.
ribā al-faḍl:	The excess in amount in <i>ribā</i> , as compared to an excess that arises out of delayed payment.
rukūʿ:	Bowing.
rukḥṣa:	(Pl. <i>rukḥaṣ</i>) Exemption.
rukn:	Essential element.
sabab:	Cause. The cause of a rule of law.
ṣadaqa:	Charity.
sadd al-dharīʿa:	Blocking the lawful means to an unlawful end.
saʿid:	Clean soil used for substitute ablution called <i>tayammum</i> .
salam:	Advance payment in a contract of sale.
sariqah:	Theft liable to the penalty of cutting off the hand.
shahāda:	Testimony.
shārīʿ:	The Lawgiver.
sharāʾiʿ:	The laws.
sharʿ:	Law.
sharʿ:	Legal.
sharīʿa:	Islamic law.

shighār:	Unlawful marriage contract in which a man marries a female relative of another by giving one of his own female relatives in marriage to him.
shirk:	Polytheism.
shubha:	Doubt in the performance of an act. Also applies to “benefit of the doubt.”
tadbīr:	The pronouncement that declares a slave to be free upon the death of the master. See <i>mudabbar</i> .
tafsīr:	Commentary on the Qurʾān.
taḥsīnī:	One of the complementary values.
taḥsīnāt:	Complementary values as compared to necessities and needs.
taklīf:	Legal obligation.
taʿzīr:	Discretionary punishment.
taqbiḥ:	To declare something bad on the basis of reason.
tawakkul:	Placing one’s trust in Allāh.
tayammum:	Substitute ablution with clean soil.
thawāb:	Spiritual reward.
ʿurf:	Custom; usage; technical terminology of the law.
ʿushr:	Tenth charged on the produce of land.
uṣūl al-fiqh:	The discipline that teaches interpretation of the texts for the derivation of the law.
uṣūlis:	Those who specialize in <i>uṣūl al-fiqh</i> .
umm al-walad:	A female slave who bears her master’s child.
ummī:	Illiterate.
umma:	The Muslim nation.
wakīl:	Agent.
walī:	The term <i>walī</i> is used in different senses. The <i>walī</i> is the person who has been granted authority over the person and the property of a minor (male or female). The <i>walī</i> is also the person who inherits blood-money of a slain victim.
waṣīyyah:	Bequest; testament; legacy.
wujūb:	Obligation.
zāhir:	The apparent meaning.
zihār:	A husband saying to his wife, “You are like the back of my mother for me.” Injurious assimilation.
zuhr:	Afternoon prayer.
zakāt:	Two and one-half percent charged on wealth as a right of Allāh for the benefit of the poor.
zinā:	Unlawful sexual intercourse (includes adultery and fornication; that is, applies to both married and unmarried persons).

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